

STATE-EMPLOYMENT
RELATIONS BOARD
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FACTFINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

November 15, 1995

In the Matter of :

Huron County Commissioners)
Solid Waste District)

and)

American Federation of State, County, and)
Municipal Employees, Ohio Council 8)

Case No. 95-MED-04-0378

APPEARANCES

For the Employer:

Sandra P. Conley, Chief Spokesperson/Consultant
Peter J. Welch, Solid Waste Coordinator

For the Union:

William F. Fogle, Staff Representative
Larry Burone, Union Representative
Charles Vogel, Union Representative

Factfinder:

Nels E. Nelson

BACKGROUND

The instant dispute involves negotiations between the Huron County Commissioners and the American Federation of State, County and Municipal Employees, Ohio Council 8 for an initial collective bargaining agreement to cover approximately twelve employees at the landfill. The Factfinder was appointed on June 16, 1995. He met with the parties on September 27, 1995. After twelve hours of mediation 16 out of approximately 38 issues were resolved. The Factfinder met with the parties again on October 30, 1995. At that time nine hours of mediation resulted in the settlement of eight issues and a brief hearing for the fourteen remaining issues. In order to stay within the total of six days authorized by the State Employment Relations Board, the parties agreed that the Factfinder could omit any discussion of the rationale for his recommendations.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison 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;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

There are fourteen issues before the Factfinder. For each issue the Factfinder will state the essence of the parties' positions. Where he feels it is appropriate, he will offer a very brief analysis. Finally, the Factfinder will offer recommended contract language.

1) Article 10 - Hours of Work, Section A - Workweek - The essential difference in the positions of the parties relates to the definition of the workweek. The union demands a workweek defined as eight hours per day, Monday through Friday, with the stipulation that Saturday work be rotated among employees who are required to work on Saturdays. The employer proposes a workweek consisting of 40 hours in seven days beginning on Sunday at 12:00 A.M.

Analysis - The Factfinder recommends that the current scheduling practices be continued. First, the employer appears to need to retain flexibility with respect to scheduling to accommodate trash haulers using the landfill. Second, the union's proposal will make all Saturday work overtime which the parties agreed would result in a 1.4% increase in wage costs.

Recommendation - The Factfinder recommends the language supplied by the employer. It is attached to this report as Appendix A.

2) Article 10 - Hours of Work, Section B - Active Pay Status - The current practice is that overtime eligibility is based on actual hours worked. The employer wishes to retain the practice. The union seeks to include all paid hours in calculating eligibility for

overtime.

Analysis - The Factfinder recommends that the current practice be continued. First, the cost of the union's proposal is not insignificant. The parties agreed that the change that the union has proposed will increase wage costs by 1.7%. Second, among county contracts only the Department of Human Services provides for overtime based on hours in active pay status.

Recommendation - The Factfinder recommends the language supplied by the employer. It is attached to this report as Appendix B.

3) Article 11 - Wages - The difference between the parties' wage demands is enormous. The union demands wage increases effective January 1, 1995 amounting to 44.4%. This adjustment is to be followed by \$.50 per hour wage increases on January 1 of 1996 and 1997. The employer proposes increasing wages by \$.20 per hour or 2.2% in 1995, \$.15 per hour or 1.6% in 1996, and \$.15 per hour or 1.6% in 1997. It also wishes to establish a three-step wage schedule.

Analysis - The primary basis for the union's wage demand is wages at the Erie County landfill. The average wage in Erie County as of March 1, 1995 was \$12.70 per hour compared to \$9.02 per hour in Huron County. The difference by job classification ranged from \$1.73 to \$5.15 per hour.

The employer position is based on a comparison to wages at landfills in Auglaize, Crawford, Defiance, Erie, and Wood Counties. The average wages for five job classifications ranged from \$7.32 to \$12.10 per hour. In two of the five classifications

wages were higher in Huron County.

The Factfinder is faced with a situation where no real bargaining took place with respect to wages. The union's demand is very clearly unrealistic under any circumstances. The employer's proposal is less than other public employees are being granted and there is no doubt that it can afford to grant its employees the same increases being granted other Ohio public employees.

The Factfinder believes that wages at the county landfill are somewhat behind the wages for similar employees. He feels that some of the comparisons offered by the employer are not appropriate. However, even if employees are behind in wages, they cannot expect to catch up in the initial negotiations. Furthermore, the Factfinder agrees that some adjustment in the relative rates of pay for various job classifications may be in order but he is convinced that he lacks the information necessary to make such adjustments. This is a task best left to the parties.

The Factfinder notes that two other three year agreements have recently been negotiated covering Huron County employees. Although the contracts submitted by the parties do not make it possible to calculate the increases granted for 1995, significantly greater increases were granted in 1996 and 1997 than what the employer is offering in the instant case. The contract between the sheriff and the Ohio Patrolmen's Benevolent Association grants 4% wage increases in 1996 and 1997. The agreement between the county engineer and AFSCME Local 3764 calls for a wage freeze in 1996 but this is followed by a \$1.11 per hour increase in wages in 1997.

Taking into account all of the statutory criteria, the Factfinder recommends

that wages be increased 5% on January 1, 1995, 3.5% on January 1, 1996, and 3.5% on January 1, 1997. Combined with the recommended establishment of longevity, this will narrow any gap in earnings that may exist between Huron County landfill employees and similar employees in other counties.

Recommendation - The Factfinder recommends the following:

The wage rates for all job classifications shall be increased 5% effective January 1, 1995, 3.5% effective January 1, 1996, and 3.5% effective January 1, 1997.

4) Article 12 - Uniforms, Section D - Boots - The union demands that work boots be provided annually to four MRF workers. The employer rejects the union's demand.

Analysis - The Factfinder recommends that the union's demand be denied. Although the four MFR workers may wear out or damage work boots more frequently than other employees, all or most of the employees wear work boots. It is not clear that four employees should be singled out for a benefit not received by other employees.

Recommendation - The Factfinder recommends that the union's demand be denied.

5) Article 14 - Health and Medical Coverage - The major item at impasse is the payment of the health insurance premium. The union demands fully paid health insurance while the employer proposes splitting evenly any increase in premiums up to \$100. Also at issue is the creation of a health insurance committee.

Analysis - The Factfinder believes that the employer's position should be

adopted. It generally tracks the agreed upon language in the contracts of the Department of Human Services and the Sheriff's Department. The language regarding the health insurance committee was modified by the employer to accommodate the union's concerns.

Recommendation - The Factfinder recommends the following contract

language:

Section 1 - During the term of the agreement, the Employer agrees to continue to provide to full-time bargaining unit employees the same or comparable medical insurance program as that in effect on October 30, 1995.

Section 2 - As proposed by the employer and attached as Appendix C.

Section 3 - As proposed by the employer and attached as Appendix D.

6) **Article 25 - Job Posting and Bidding**

Recommendation - The Factfinder recommends the following contract

language:

Section 1 - Whenever the Employer determines that a permanent full-time position vacancy exists within the bargaining unit, a notice of vacancy will be posted with the Department for a period of five (5) work days. Applicants may apply for the position by completing an application form and submitting it to the Solid Waste Coordinator prior to the last day of the posting. The Employer shall not be obligated to consider any applications submitted after the expiration date of the posting.

Section 2 - The job posting shall contain the classification title, rate or range of pay, minimum qualifications for the position, licensing or certification requirements, and a brief summary of the job duties.

Section 3 - Promotions from within the bargaining unit will be awarded to the senior qualified bidder except where a less senior bidder is clearly more qualified than the senior bidder. Every applicant shall be considered based upon the following criteria: work experience, education, skill and abilities, interview of applicants, personal references, and/or job performance. Each applicant shall be considered based upon the above criteria to determine qualifications to perform the essential functions of the position. If there are

no qualified internal applicants, the position may be filled by hiring an outside applicant. "Promotion" for purposes of this agreement, shall mean placement into a position which carries a higher pay rate or pay range than that previously held.

Section 4 - A promoted employee will be required to satisfactorily complete the required probationary period. If an employee is promoted to a higher classification and fails to perform properly, he shall be returned to his former classification, provided that such improper performance is not cause for termination from employment.

7) Article 29 - Resignation/Termination/Retirement, Section C(4) - Sick Leave - The current policy is that upon retirement an employee is paid one-quarter of his or her unused sick leave up to a maximum of 45 days. The union seeks to have employees paid in full for sick leave subject to a schedule of maximum hours based upon years of service. The employer wishes to retain the current arrangement.

Analysis - The Factfinder must recommend the employer's position. It is consistent with the contracts in the Department of Human Services and the Sheriff's Department.

Recommendation - The Factfinder recommends the employer's position as contained in Appendix E.

8) Article 30 - Layoff and Recall - The issue is whether the contract should list the reasons for layoff as is the case in the Ohio Revised Code.

Analysis - The Factfinder believes that the contract should reference the reasons given for layoff in the Ohio Revised Code. Employees in the unit are now subject to the Ohio Revised Code and employees in the Sheriff's Department and in the County

Engineer's Department are covered by similar language.

Recommendation - The Factfinder recommends the following:

Section 1 - Whenever the Employer determines that a layoff (reduction in force) is necessary within the bargaining unit due to lack of work, lack of funds, or job abolishment, the Employer shall notify the affected employees in writing at least seven (7) calendar days in advance of the effective date of the layoff. A copy of the notice(s) shall be submitted to the Union.

9) Article 33 - Union Rights, Section B - Checkoff - The Factfinder recommends that the union's proposal be adopted.

Recommendation - The Factfinder recommends the language attached as Appendix F.

10) Article 33 - Union Rights, Section C - Fair Share Fee - The union demands that non-members pay a fair share fee. The employer opposes the union's demand.

Analysis - The Factfinder notes three points. First, two of the three units in the county have fair share fees. Second, the union claims that 10 of 12 members of the bargaining unit are union members. Third, fair share fees are very common in northern Ohio counties.

Recommendation - The Factfinder recommends the union's proposal contained in Appendix G.

11) Article 33 - Union Rights, Section E - Union Representation

Recommendation - The Factfinder recommends the employer's position as

contained in Appendix H.

12) Article 41 - Longevity - At the present time landfill employees do not receive longevity. The union seeks longevity calculated as \$75 per year beginning with the fourth year subject to a maximum of \$1000. The employer opposes the creation of longevity.

Analysis - The Factfinder would note two points. First, the parties agreed that the cost of the union's proposal in 1995 would be 2.4%. Second, employees in the Department of Human Services and the Sheriff's Department receive longevity.

The Factfinder believes that longevity ought to be adopted for employees at the landfill. He feels that the program proposed by the union is too costly and on that basis has reduced the payment demanded by the union. The recommended longevity is that contained in the Sheriff's Department's contract.

Recommendation - The Factfinder recommends the following contract language:

Section 1 - All employees, after completing their fifth (5th) year of service, shall receive a longevity pay supplement equal to fifty dollars (\$50.00) times their years of service up to a maximum of one thousand dollars (\$1000). Longevity payments shall be made in the final pay period of the calendar year.

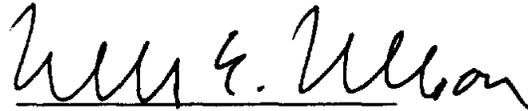
13) Article 44 - Duration - The parties agree on a three year agreement. The issue is the following sentence -- "all matters not addressed herein during the period of negotiations remain reserved to the Employer for the term of this agreement."

Recommendation - The Factfinder recommends the union's proposal as contained in Appendix I.

14) **Side Letter** - The union wishes to require the employer to provide certain inoculations to employees at no cost. The employer refuses this demand.

Recommendation - The Factfinder recommends the following side letter:

The employer shall abide by the past practice regarding the furnishing of free inoculations to employees.

A handwritten signature in cursive script, reading "Nels E. Nelson", written over a horizontal line.

Nels E. Nelson
Factfinder

November 15, 1995
Russell Township
Geauga County, Ohio

Appendix A

~~ILLUINOIS COUNTY S.W.D.~~

~~COUNTERPROPOSAL 2~~

~~AFSCME~~

~~DATE SUBMITTED: 8/24/95~~

~~ARTICLE 10 (ARTICLE 33)~~

~~HOURS OF WORK/OVERTIME~~

~~Section 1.~~ This article is intended to define the normal range of work hours for regular full-time employees for the purposes of overtime compensation. Part-time employees, for purposes of this agreement, shall be defined as permanent employees who regularly scheduled to work less than forty (40) hours per week.

~~Section 2.~~ The normal work week for regular full-time employees shall normally consist of forty (40) hours of work per week exclusive of the time allotted for meal periods. Work day hours may vary in order to meet operational needs. Work weeks shall commence at 12:01 a.m. Sunday and conclude at midnight on Saturday. In the event it is necessary to permanently change the hours of work, starting and/or quitting time, or schedule of hours for any work unit or department, the Employer shall first meet with the Union to notify and discuss said changes. This section shall not be construed as a guarantee nor limitation of work hours. All full-time employees and part-time employees scheduled for an eight (8) hour work day or more shall be allowed and scheduled at least one-half (1/2) hour for an uninterrupted, unpaid meal period.

Appendix B

~~HOURS OF WORK/OVERTIME~~

~~HURON COUNTY S.W.D.~~

~~(CONTINUED)~~

~~COUNTERPROPOSAL~~

~~AFSCME~~

~~DATE SUBMITTED: 8/24/95~~

~~Section 3:~~ All bargaining unit employees shall receive time and one-half (1 1/2) their regular rate of pay for all hours worked in excess of forty (40) hours in one work week.

~~As an option, employees may elect to take overtime compensation in the form of pay or compensatory time off. Employees may not accrue more than eighty (80) hours of compensatory time at any one time. Compensatory time off shall be scheduled in advance at the request of the employee and with the approval of the Department Head. Compensatory time must be used within the calendar year it was earned, or it shall be scheduled by the Employer, or paid within the first (1st) pay period of December of the applicable year. In consideration of the above, compensatory time off may not be selected~~

~~for hours worked in November or December of any year.~~ Hours worked for purposes of this article shall include actual hours worked.

~~Section 4: Premium and/or overtime compensation shall not be paid more than once for the same hours worked.~~

~~Section 5: Employees called into work at a time which does not abut their normal scheduled~~

Appendix C

~~Section 2~~ For the term of this agreement, the Employer agrees to contribute up to the following maximum amounts per month toward the cost of health and medical coverage for each participating employee:

<u>Type of Coverage</u>	<u>Maximum Employer Contribution</u>
Family Coverage	\$420.00/month
Single Coverage	\$164.00/month

Should the cost of medical coverage exceed the maximum amounts set forth above, the parties agree to share the cost increases equally (fifty/fifty {50%/50%}) up to a limit of five hundred twenty dollars (\$520.00) for family coverage and two hundred sixty-four dollars (\$264.00) for single coverage. Cost increases in excess of the five hundred twenty dollar (\$520.00) and two hundred sixty-four dollar (\$264.00) limits, if any, will be paid by the Employer for the duration of this agreement.

A participating employee may elect single or family coverage as applicable. Costs for coverage in excess of the maximum amounts set forth above shall be paid for by the participating employee, through payroll deduction, in order to continue coverage.

~~FOR THE EMPLOYER~~

~~FOR THE UNION~~

~~DATE SUBMITTED~~

~~DATE SIGNED~~

Appendix D

Section 2

The parties do hereby agree that the County and County employees will form an Employee Review Committee to review health benefit levels ~~and~~ inclusive of cost containment ~~options~~ alternative. The committee shall include one (1) ^{Union Representative,} ~~employee~~ and ^{and} one (1) management representative from each County Department. Where a bargaining exists within a Department the Union shall elect or appoint the employee representative. The Committee shall meet within November of each year and submit recommendations to the Board of Commissioners not later than December 15, for consideration for the following Plan year.

Appendix E

~~E:~~ A retiring employee shall be paid for accrued but unused sick leave as follows:

An employee at the time of formal retirement from active service with the Employer shall be paid one-fourth (1/4) of the value of his earned but unused sick leave up to a maximum of forty-five (45) days of pay (i.e., one-fourth {1/4} of up to one hundred eighty {180} days or a maximum three hundred sixty {360} hours of pay). An eligible employee retiring from active service must complete a "sick leave payment upon retirement" form to initiate the payment process.

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Appendix F

B. UNION DUES/CHECK OFF

The Employer agrees to make payroll deduction of Union dues in keeping with the following:

1. The Union shall inform the Employer of the amount of Union dues, fees, and assessments. Any changes in same shall be notified to the employer thirty (30) days in advance of the effective date of change in deduction amount.
2. Deductions shall be made once a month from the employees pay. Monies so deducted shall be timely transmitted to the Union, at the mailing address provided by the Union.
3. The Union shall provide the Employer with a written payroll deduction authorization form, that includes a statement of agreement to said dues deduction and signed by the employee.
4. The Employer shall cease making "check-off" deduction upon an employee's: (a) termination of employment, (b) move to a job outside the bargaining unit, (c) layoff from work, (d) approved extended leave of absence, or (e) revocation of

*Union
8-28-95*

the check-off authorization in accordance with applicable law or the terms of this Agreement.

5. The Employer shall not make dues deduction for an employee in any month that the employee failed to receive sufficient wages to equal the dues deduction amount and after required Federal and State deductions are made.
6. The Employee's written authorization for dues deductions shall be honored by the Employer for the duration of this Agreement and/or the term of recognition of the Union, whichever is longer.
7. Neither an employee or the Union shall have any 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 such error is claimed to have occurred. If such claim of error is agreed to by the Employer, it shall be corrected at the next pay period in which Union dues are deducted.
8. Payroll deduction of dues shall be authorized for the Union only. No other organization attempting to represent the employees shall be granted payroll deduction of dues.

Appendix G

C. FAIR SHARE FEE DEDUCTIONS

An employee, after successfully completing initial probationary employment and does not join the Union, or any employee currently employed and not a member of the Union within thirty (30) days of the effective date of this Agreement, and upon having been employed for one hundred twenty (120) or more days, shall pay a

*11/10/95
8-20-95*

Fair Share Fee to the Union as a condition of employment. Said Fee shall be in keeping with the following:

1. The Fair Share Fee amount shall be communicated to the Employer in writing by the Union.
2. The Fee shall be deducted automatically and without written authorization from an employee.
3. Fee deductions shall be made at the same time and in the same manner as Union dues deductions as set forth under this Article.
4. The Fair Share Fee shall not exceed the regular Union dues.
5. The Union represents to the Employer that it has and shall maintain in force throughout the term of this Agreement a Fair Share Fee reduction and challenge procedure for fee paying employees, which conforms to provisions of ORC 4117.09(C), Federal law and applicable State and Federal Court decisions.

Appendix H

HERON COUNTY S.W.D.

~~COUNTERPROPOSAL 2~~

~~AFCME~~

~~DATE SUBMITTED: 8/24/05~~

~~ARTICLE 33-B (ARTICLE 2 Sections 4, 5, 7)~~

~~UNION REPRESENTATION~~

Section 1. The Employer will recognize three (3) employees, selected by the Union, to act as representatives for the purpose of processing grievances and attending meetings in accordance with the provisions of the grievance procedure contained herein and at any meetings at which the Employer requests a representative to be present. Such employee representatives shall include the Local Union President and two (2) stewards. No employee shall be recognized by the Employer as a Union representative until the Union has presented the Employer with written certification of that person's selection and capacity (title). Further, the Union shall notify the Employer in writing of any changes in officers of the Local Union and/or stewards.

Section 2. The investigation and writing of grievances shall be on non-duty time. However, an employee representative may be released during on-duty time to investigate a grievance involving loss of pay or position contingent upon the approval of the Department Head. If grievance hearings are scheduled during an employee's regular duty hours, the employee and Local Union officer or steward shall not suffer any loss of pay while attending the hearing.

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

~~UNION REPRESENTATION~~

~~HUDON COUNTY S.W.D.~~

~~(CONTINUED)~~

~~COLLECTIVE BARGAINING PROPOSAL 2~~

~~AFSCME~~

~~DATE SUBMITTED: 8/24/95~~

Employees and the Local Union officer or steward shall not be compensated for attendance at hearings during non-duty hours.

Section 3. One (1) non-employee AFSCME Union representative will be recognized by the Employer and admitted to the Employer's facilities for the purpose of investigating and processing grievances or attending meetings as permitted herein, upon advance notice to the Employer. The Union agrees that such activities shall not interfere with the normal work duties of employees, except to the extent specifically authorized in advance by the Employer and/or this agreement.

Section 4. The Union agrees that no official of the Union, employee or non-employee, shall interfere, interrupt, or disrupt the normal work duties of other employees. The Union further agrees not to conduct Union business during working hours except to the extent specifically authorized by the Employer, and only with prior notice to and approval by the

Department Head/designee.

~~CONFIDENTIAL~~

Appendix I

Language only

to be made subject to Hyrule to!

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HURON COUNTY S.W.D.

COUNTERPROPOSAL 1

~~AFSCME~~

DATE: JUNE 13, 1995

~~ARTICLE 1~~

DURATION OF AGREEMENT

Section 1. This agreement shall be effective as of 1-1-95, 1995, and shall remain in full force and effect through (12-31-97 Midnight), 1997, unless otherwise terminated as provided

Item

Section 2. If either party desires to modify, amend or terminate this agreement, it shall be given written notice of such intent no earlier than one hundred twenty (120) calendar days nor later than ninety (90) calendar days prior to the expiration date of this agreement. Such notice shall be by certified mail with return receipt. The parties shall attempt to commence negotiations within two (2) calendar weeks upon receiving notice of intent.

~~Section 3. The parties acknowledge that during the negotiations which resulted in this agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. The provisions of this agreement constitute the agreed in final agreement~~

DURATION OF AGREEMENT
(CONTINUED)

Engage only

HURON COUNTY S.W.D.

COUNTERPROPOSAL 1

AFSCME

DATE: JUNE 13, 1995

~~entire agreement between the Employer and the Union, and all prior agreements, either oral or written, are hereby cancelled. Therefore, the Employer and the Union, for the life of this agreement, each voluntarily and unequivocally waives the right, and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter referred to or covered in this agreement or with respect to any subject or matter not specifically referred to or covered in this agreement even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this agreement. All matters not addressed herein during the period of negotiations remain reserved to the Employer for the term of this agreement.~~

Section 4. However, nothing in this article shall preclude the parties from mutually agreeing to amend or modify this agreement, provided such amendment is reduced to writing and signed by both parties.

~~FOR THE EMPLOYER~~

~~FOR THE UNION~~

~~DATE SIGNED~~