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**BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

SEP 11 1998  
SERB

In The Matter Of Factfinding Between

**LAWRENCE COUNTY COMMISSIONERS**

**And**

**SERB Case No. 98-MED-10-0885**

**AFSCME OHIO COUNCIL 8,  
LOCAL 3319C**

Appearances:

For the Commissioners: Robert W. Cross, President  
Cross Management Consulting Services, Inc.  
Wheelersburg, Ohio

For the Union: Sandra S. Shonborn  
Staff Representative  
AFSCME Ohio Council 8  
The Plains, Ohio

**REPORT AND RECOMMENDATIONS OF THE FACT FINDER**

Frank A. Keenan  
Fact Finder

**BACKGROUND:**

Evidence and arguments in support of the parties' respective positions on the issues in dispute was heard in Ironton, Ohio on March 31, 1999. 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 below, whenever such factors were put forward by the parties, 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 stand 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.

References to the "current Contract" more accurately refer to the parties' most recently expired Agreement.

The Bargaining Unit is a unique one, comprised as it is of an amalgam of some nine (9) County Administrators and/or Supervisors.

**ISSUE #1: ARTICLE 18 – HOLIDAYS****Evidence And Parties' Positions:**

Under the terms of the current Contract, the Bargaining Unit is granted eleven (11) full day Holidays and two (2) one-half day Holidays. The Union seeks to add the equivalent of four (4) additional Holidays. Thus, currently employees receive ½ of a day for New Year's Eve and Christmas Eve Day. The Union would increase that to a full day both days. The Union would also add Good Friday; the Day After Thanksgiving Day; and, the Employee's Birthday. It points out that currently employees are given one-half a day for Good Friday and the day after Thanksgiving, albeit these are not listed as Holidays in the Contract. In support of its proposal, the Union points to the County's Collective Bargaining Agreement for its Department of Human Services, which provides for fourteen (14) full day Holidays. It also points to the Collective Bargaining Agreement for the County Engineer's employees, which also provides for fourteen (14) full day Holidays.

The Employer resists any changes to the current Contract's Holiday provisions, asserting they are generous as it is. The County points to its MR/DD Collective Bargaining Agreement and its Sheriff's Department Collective Bargaining Agreement Holiday provisions, which provide for but ten (10) and eleven (11) full day Holidays, respectively. And other General Fund County employees get only ten (10) Holidays. Costing out the Union's Holiday proposal, the County asserts it would cost the County some \$12,150.00. The County also points out that the Department of Human Services is 99% State and Federal

funded, and the Engineer's Department is not supported from the County's General Fund Revenue as is the Bargaining Unit, but rather from dedicated gasoline taxes.

The Union counters that since the Bargaining Unit Members are salaried employees, there actually is no cost to the County. The County's response is that in any event it loses three additional days of work from the Bargaining Unit, the equivalent of \$12,145.00.

**Rationale:**

I'm persuaded by the County's contentions. The current Holiday package is already generous. Given the different funding sources for DHS and Engineer employees, these two agencies of County Government are not the best internal comparables. And, other County employees receive fewer Holidays than the Bargaining Unit receives under the current Contract.

**Recommendation:**

It is recommended that the parties retain current Contract language at Article 18 – Holidays.

**ISSUE #2: ARTICLE 19 – INSURANCE**

**Evidence and Parties' Positions:**

The Union has agreed to new Contract language proposed by the County, but would have the County fully pay the insurance premium. The Union would also add the Dental II plan under the AFSCME Care Plan at a cost of \$26.00 per employee per month to be paid by the Employer. Currently, there is a split on the

health insurance premium of 85% paid by the County and 15% paid by the Employee. The County would continue this premium sharing split, and it is opposed to the additional costs of the Dental II Plan.

In support of its proposal, the Union asserts that the County is financially sound and is showing an \$11,000,000.00 carryover. The County, asserts the Union, can well afford its proposal. The Union also points to the County's DHS as an internal comparable, noting that the County pays 100% of that bargaining unit's premium; and that they also pay for the Dental II AFSCME Care Plan coverage. It also points to the more generous provisions on health insurance provided to employees of the Engineering Department.

In support of its proposal, the County introduced SERB Health Insurance Survey data reflecting that over two thirds, 68%, of Ohio Public Employees contribute to the cost of their medical insurance. Other data showing a trend toward employee premium sharing was also introduced. The County also notes that its Contract with the County MR/DD agency provides for a 75%-25% premium split. School Districts in the County range from a 75%-25% to a 90%-10% split, and the Ironton School District's Collective Bargaining Agreement provides for a 85%-15% split. Likewise its Contract with the Sheriff's Department. Moreover, asserts the County, the Sheriff's Department has a "me too" clause, with the consequences that a fully-paid-by-the-Employer provision here would require the same there as well, a costly proposition.

**Rationale:**

Given the small number of employees in the Bargaining Unit, the Union is correct when it states that "the money is there to pay for it." However, the status quo appears to be well within the main stream of the Ohio Public sector health insurance experience. In a nutshell, the present climate of better than two thirds of Public employees sharing in the cost of health insurance, many by way of premium sharing, is not an environment supportive of the Union's insurance proposals, especially where, as here, no significant *quid pro quo* is offered in return for it.

**Recommendation:**

It is recommended that the parties adopt as Article 19 the County's proposal, reproduced in Appendix I.

**ISSUE #3: ARTICLE 20 – WAGES****Evidence and Parties' Positions:**

The County proposes a one bonus payment of \$700.00 each year for three (3) years.

The Union proposes a five percent (5%) across-the-board increase for employees with the exception of fiscal officer-CSEA and assistant administrator-Union Rome Subsewer district, where the Union is proposing equity increases in the first year of the agreement. The Union also proposes a \$1,000.00 signing bonus in the first year of the Agreement. The employer has traditionally granted

five percent (5%) increases to its employees. The employer is financially stable to grant the increases proposed by the Union. The Union contends that these employees are underpaid compared with their counterparts in Lawrence County. The Union proposes that the effective dates on all increases is January 1, 1999, 2000, 2001.

Understandably, this issue generated the greatest volume of data submitted and consumed the greatest amount of time at the Hearing. Some of this data included County budgets and estimates of income, as well as projected expenses. The parties differed and bickered over just what the data revealed. However, given the smallness of the Bargaining Unit and the essential soundness of the County's finances, it is clear that the County would meet the Union's proposals. The question of increased compensation therefore is one of fairness and reasonableness, and not one of whether the County has the ability-to-pay the Union's demands.

The County's \$700.00 bonus payment proposal as a percent of base ranges over the Bargaining Unit of a low of 1.3% for the Administrator, Union Rome Sewer, to a high of 5.5% for the Administrator, Flood Plain. All other positions are above 2%, but at or below 3%. The County calculates the Union's proposal, counting the effect of increases to PERS resulting from the Union's wage increases, as amounting to \$60,384.00 over the life of a three year contract. The County emphasizes the low CPI index figures of 1.3 – 1.6% and at worst 1.7% in communities of 50,000 or less, which is certainly representative of the County's demographics. The County also notes on the income side that

significant Employers, such as Allied Steel and Cabletron are closing their operations in the County, thereby adversely impacting County revenues. Other shutdowns without the County, but nearby such as Ashland Oil's decision to move its headquarters out of nearby Ashland, Kentucky, also has adverse economic impact on the County. The County also notes that its unemployment rate of 7.8% is nearly double the seasonably adjusted rate of 4.2% for the State of Ohio. These circumstances warrant tempering of the Union's demands, argues the County.

**Rationale:**

Evidently driven by the consistently low CPI index, settlements in the 90's in Ohio's Public sector have typically been "in the threes." In my view, such a settlement is supported by the record and appropriate here as well.

**Recommendation:**

It is recommended that an across-the-board increase of three and one half percent (3.5%), effective January 1, 1999, be adopted; that an across-the-board increase of three percent (3%), effective January 1, 2000, be adopted; and, that an across-the-board increase of three percent (3%), effective January 1, 2001, be adopted.

**ISSUE #4: [NEW] ADVANCEMENT & GRADE**

**Evidence and Parties' Positions:**

The Union proposes this new Article as an incentive for employees to seek and attain licenses related to their positions. The new Article would read as follows:

**“ADVANCEMENT AND GRADE**

Any bargaining unit employee who becomes licensed for any job related work, shall be entitled to be paid at that level without regard to whether or not said bargaining unit employee held any previous licenses. Once said bargaining unit employee secures said license, the employer shall increase the rate of pay by one dollar (\$1.00) per hour for each license secured, and an additional one dollar (\$1.00) per hour for each additional license secured. The intent of this Article is to have the increases be cumulative with each additional license.

**EDUCATION AND LICENSURE**

Any employee who desires to secure advancement, may seek any license required by law or the employer for advancement on the job. The employer will pay all course registration fees, cost of books and materials, and such other fees that are required. The employer shall also pay reasonable mileage and travel costs related to the courses required to secure said license. Any employee who is required by law or the employer to have continuing education to maintain a license, shall have the fees for said courses and reasonable travel and mileage expenses paid by the employer.”

The County resists adopting this new provision. It asserts that it is just another attempt to raise wages unrealistically. The County asserts that Bargaining Unit incumbents were hired with no licensure requirement. Had the County required the licenses, the situation would be different. The Union has failed to show any meaningful reason for adopting this provision.

**Rationale:**

As the County contends, this proposal has cost implications and provides a vehicle for additional compensation to the bargaining unit. But, its need has not been demonstrated. Additionally, the Union can point to no statutory factor which supports its proposal.

**Recommendation:**

This “new” proposal is not recommended for incorporation into the parties’ Contract.

**ISSUE #5: [NEW] ARTICLE – ALCOHOL AND DRUG TESTING****Evidence and Parties' Positions:**

The Employer proposes an Alcohol and Drug Testing provision in order to assure that the Supervisor and Fiduciary employees who constitute the Bargaining Unit maintain a drug-free workplace.

The Union is strongly opposed to such a contractualized policy. It contends that there has not been an incident that would serve to justify this proposal of the County. The Employer cannot show where a problem exists that would warrant same.

**Rationale:**

As the Union contends, the record fails to show any need for the Alcohol and Drug Testing provisions that the County proposes. Additionally, the County can point to no statutory factor which supports its proposal.

**Recommendation:**

This "new" proposal of the County is not recommended for incorporation into the parties' Contract.

**ISSUE #6: [NEW] ARTICLE – SUCCESSOR CLAUSE****Evidence and Parties' Positions:**

The Union proposes the following Successor Clause:

**"SUCCESSOR CLAUSE**

The Collective Bargaining Agreement and all the terms and conditions thereof shall be binding upon the Board of County Commissioners of Lawrence County, Ohio and any successors and assigns. Successors and assigns shall mean any entity either public or private or any combination thereof that assumes any ownership or control of any of the work performed by members of the bargaining

unit. This clause shall apply concerning any transfer of ownership or control whether some is informal, formal, voluntary, involuntary or by contract, sale, gift or operation of law.

If the current collective bargaining agreement has expired at the time of any transfer of ownership and/or control, it shall be a condition of said transfer that the transferee recognize the union and this contract with all the terms and conditions thereof. The terms and conditions shall be binding upon the successor until a new contract can be negotiated between the union and the successor.”

The Union asserts that it seeks to protect the bargaining unit from privatization or the assimilation of some Bargaining Unit positions into other segments of County Government. The Union notes that during the period of the current Contract the County attempted to reorganize and delete positions within the Bargaining Unit by hiring new employees and renaming other positions.

The County opposes incorporation of a Successor Clause and expresses the concern that it may be illegal for it to enter into such a provision. In support thereof, the County notes an Attorney General Opinion rendered in 1991, which, citing judicial authority, states in pertinent part as follows:

“The question then arises as to whether a board of county commissioners may grant to an individual in the unclassified service a contractual claim of entitlement to continued employment or whether R.C. 124.11 and R.C. 124.34, by specifically granting only individuals in the classified service a statutory claim of entitlement to continued employment, foreclose such action by a board of county commissioners. It is well settled in Ohio that a board of county commissioners has only those powers which are prescribed by statute or necessarily implied therefrom, in order to perform the duties entrusted to it. State ex rel. Shriver v. Board of Comm’rs of Belmont County, 148 Ohio St. 277, 74 N.E. 2d 248 (1947) (syllabus, paragraph two); Elder v. Smith, 103 Ohio St. 369, 133 N.E. 791 (1921) (syllabus, paragraph one). I have been unable to locate a section of the Revised Code, other than R.C. Chapter 4117 authorizing collective bargaining agreements, (FN4) which expressly authorizes a board of county commissioners to enter into

employment contracts which provide a specific term of employment with individuals in the unclassified service.”

**Rationale:**

I note that the cited Attorney General’s Opinion seems to indicate that perhaps a Collective Bargaining Agreement’s provisions would be an exception to any proscription against providing unclassified employees such as the Bargaining Unit members “a contractual claim of entitlement to continued employment,” and that the County’s apparent attempt to undertake changes which would diminish the bargaining unit is the type of predicate that is often cited as justification for a successor clause. Nonetheless, such a clause constitutes a significant incursion into Management rights. Such an incursion would normally require a significant *quid pro quo* from the Union to obtain it. No such *quid pro quo* is being proffered here. Then too, it appears that the County’s attempts, cited by the Union, were unsuccessful, and the record fails to show any renewed or present efforts to diminish the Bargaining Unit. In these circumstances, the Union’s Successor Clause proposal will not be recommended.

**Recommendation:**

The Union’s proposed Successor Clause is not recommended.

Finally, it is recommended that all of the parties' tentative agreements be incorporated into their Contract. This includes the Fact Finder's Report and Recommendations.

April 15, 1999



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Frank A. Keenan  
Fact Finder

ARTICLE 19: INSURANCE

Section A

The County shall make available to bargaining unit members who have completed their initial probationary period of one hundred and twenty (120) working days and their eligible dependents substantially similar group health hospitalization, surgical, and major medical insurance coverage and benefits as existed in the County's conventional insurance plan immediately prior to the signing of this Agreement. The County reserves the right to change or provide alternate insurance carriers, or to self-insure as it deems appropriate for any form or portion of insurance coverage referred to in this Article, so long as the new coverage and benefits are substantially similar to the conventional insurance which predated this Agreement. The County shall pay 85% of all non-probationary bargaining unit member's premiums during the term of this Agreement, and the Bargaining Unit member will pay 15% of the premiums of the health insurance.

Section B

The County reserves the right to institute the same cost containment measures as implemented on all other County employees relative to insurance coverage so long as the basic level of insurance benefits remains substantially similar to the conventional insurance coverage in effect immediately prior to this Agreement. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, preferred provider provisions, prohibition on weekend admissions except in emergency situations, and mandatory out-patient elective surgery for certain designated surgical procedures.

Section C

The failure of any insurance carrier(s) or plan administrator(s) to provide any benefit for which it has contracted or is obligated shall result in no liability to the County, nor shall such failure be considered a breach by the County of any obligation undertaken under this or any other Agreement. However, nothing in this Agreement shall be construed to relieve any insurance carrier(s) or plan administrator(s) from any liability it may have to the County, bargaining unit member or beneficiary of any bargaining unit member.

## APPENDIX I (COND'D)

### Section D

Any change in benefits or coverage as a result of a change in insurance carriers or to self-insurance shall be reviewed by representatives of the bargaining unit to insure compliance with this Article. The bargaining unit reserves the right to utilize the established grievance procedure or other legal processes as it deems necessary to insure compliance.

### Section E

When an employee is on an approved maternity leave or an approved disability leave, and has reached a non-paid status, the Employer shall continue the coverage of the group health insurance as called for in this Article for the first three (3) months on non-paid status.

At the end of this three (3) month period, the employee shall have insurance conversion rights, at the employee's expense, if so desired.

The Employer shall only be required to provide the three (3) month coverage referred to above for any one employee for a total of three (3) months within any twelve (12) month period. This twelve (12) month period shall begin on the first day of the first leave in which the Employer provides the above mentioned coverage.

### Section F

The Employer agrees to provide life insurance as is provided through, and in conjunction with, the County group Health Plan.