

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of)	
Fact-Finding Between:)	
)	
)	
Monroe County Engineer		Case No. 2024-MED-01-0026
Employer,)	
)	
)	
-and-)	Pete B. Lowe
)	Fact-Finder
)	
AFSCME Ohio Council 8)	
Local 3852)	

**FACT-FINDING REPORT
and
RECOMMENDATIONS**

Appearances

For the Union:

Deborah L. Chonko, Staff Representative, AFSCME Ohio Council 8
Bill Moats
David Saffle
Tim Mahoney

For the Employer

Amy M. Zwick, Monroe County Engineer
Jonathan J. Downes, Labor Counsel to Engineer

Date of Issuance: April 29, 2024

PROCEDURAL BACKGROUND

The State Employment Relations Board (SERB), pursuant to Ohio Revised Code Section 4117.14(C) (3), appointed myself, Pete B. Lowe, as the Factfinder in this matter on March 15, 2024. After contacting both parties, I was informed they desired to extend the period for fact-finding. On March 22, 2024, I received an email from the Union's representative indicating the parties had agreed to extend the period for fact-finding until April 19, 2024. The correspondence also indicated a copy of the email had been provided to the Employer's representative and to SERB. Subsequently, after several email exchanges between myself and the parties, a fact-finding hearing was scheduled for April 16, 2024.

I received the Employer's pre-hearing submission statement on April 12, 2024 at 3:31 PM. I received the Union's pre-hearing submission statement on April 15, 2024 at 4:32 PM.

The hearing was held on April 16, 2024. At the conclusion of the proceedings the parties mutually agreed that they did not want the fact-finding report issued by the extended deadline due to problems with scheduling a date for voting on the fact-finder's recommendations. Prior to the close of the hearing the parties signed a second extension agreement and requested that the report and recommendations be issued on April 29, 2024. The Employer's representative indicated he would file a copy of the newest extension with SERB.

DESCRIPTION OF THE BARGAINING UNIT

The Union is the sole and exclusive bargaining agent for approximately 20 employees in road, bridge, culvert, ditches and equipment maintenance positions under the authority of the Monroe County Engineer. Bargaining Unit positions include the following classifications: Laborer; Truck Driver; Grader Operator; Equipment Operator, Mechanic, Drafting Tech I.

DESCRIPTION OF THE EMPLOYER

The Employer is the elected County Engineer and is responsible for all duties authorized or declared by law to be performed for the County by a registered professional engineer or registered surveyor. The County Engineer is responsible for the construction, maintenance, and repair of the County's bridges, culverts, roads, drains, ditches, and roads, either through the Engineer's staff or by preparing plans, specifications, details, and estimates of cost for private contractors to perform such activities.

BARGAINING HISTORY

The parties last bargaining session occurred on February 28, 2024 with a SERB appointed Mediator. During that session the parties did reach agreement on which articles of the existing Agreement should remain unchanged and did also sign a few tentative agreements.

THE HEARING PROCEDURES

The hearing began at 10:30 AM on April 16, 2024. The factfinding process was explained to the parties and the parties were offered the opportunity to attempt mediation prior to beginning the formal fact-finding hearing. Both parties consented to mediation prior to holding the hearing with the hope of resolving all the issues or at least narrowing the number of unresolved issues. To start the mediation process I asked the parties to clarify which articles in their current Collective Bargaining Agreement (CBA) they both agreed should remain unchanged. Both parties agreed the following articles should remain unchanged and be included as part of the final CBA once a settlement is reached on the entire Agreement:

UNCHANGED ARTICLES

ARTICLE 1 UNION RECOGNITION
ARTICLE 2 MANAGEMENT RIGHTS
ARTICLE 3 WORK RULES AND REGULATIONS
ARTICLE 5 NON-DISCRIMINATION/GENDER
ARTICLE 6 PROBATIONARY PERIODS
ARTICLE 8 NO STRIKE/NO LOCKOUT
ARTICLE 9 DISCIPLINARY PROCEDURES
ARTICLE 10 GRIEVANCE PROCEDURE
ARTICLE 11 SENIORITY
ARTICLE 13 TEMPORARY TRANSFERS
ARTICLE 15 OVERTIME DISTRIBUTION
ARTICLE 16 LAYOFF AND RECALL
ARTICLE 18 BULLETIN BOARDS
ARTICLE 19 LEAVES OF ABSENCE
ARTICLE 20 LABOR/MANAGEMENT MEETING
ARTICLE 22 CONVERSION OF UNUSED SICK LEAVE
ARTICLE 25 CALL - IN PAY
ARTICLE 26 CONTRACTING OUT
ARTICLE 29 WAIVER IN CASE OF EMERGENCY
ARTICLE 30 SEVERABILITY
ARTICLE 31 COMMERCIAL DRIVER'S LICENSE (CDL)

NOTE: The Union also included the PURPOSE statement as being unchanged in its submission statement and neither party submitted a proposal to change the PURPOSE Statement contained at the beginning of the current CBA. Therefore, I am recommending that the Purpose Statement, as contained in the current CBA, be included in the subsequent CBA if my report and recommendations are accepted by the parties.

Next, I asked the parties to clarify which articles they had signed off as tentative agreements. Both parties agreed they had reached tentative agreement on the changes in the following articles:

PREVIOUSLY SIGNED TENTATIVE AGREEMENTS

ARTICLE 4 UNION REPRESENTATION (As signed by the parties)

ARTICLE 17 HEALTH AND SAFETY (Article unchanged except for Section 17.2)

ARTICLE 21 SICK LEAVE/FUNERAL LEAVE (Article unchanged except for Section 21.10)

ARTICLE 23 VACATION LEAVE (Section 23.1 only, remainder of Article unresolved)

ARTICLE 24 HOLIDAYS (Article unchanged except for Section 24.1)

ARTICLE 32 DURATION OF THE AGREEMENT (As signed by the parties)

During the mediation process with the Fact-finder, both parties agreed and sign tentative agreements to resolve the following previously unresolved articles:

ADDITIONAL TENTATIVE AGREEMENTS SIGNED AT HEARING

ARTICLE 7 DUES DEDUCTION (Parties agreed to leave the current Agreement unchanged and signed a Memorandum of Understanding regarding the Auditor's transfer of dues to the union utilizing ACH once the County's payroll system can accommodate such transmission).

ARTICLE 12 VACANCIES, PROMOTIONS, AND TRANSFERS (Parties initialed two tentative agreements amending Section 12.4 and maintaining current contract provisions in the remaining sections of Article 12.

ARTICLE 28 HEALTH INSURANCE (Parties signed a tentative agreement maintaining current contract provisions)

Both parties requested that I incorporate the above listed articles in my report and recommendations. Since both parties have copies of the signed tentative agreements, they indicated it was not necessary for me to include the actual articles in my report. However, all the unchanged articles and the signed tentative agreements are hereby included by reference in my final report and recommended settlement.

By mid-afternoon it became apparent that the parties were not going to be able to resolve the three remaining articles which included the following:

UNRESOLVED ARTICLES

ARTICLE 14 HOURS OF WORK/OVERTIME

ARTICLE 23 VACATION LEAVE

ARTICLE 27 WAGES (Including APPENDIX A Hourly Rates of Pay)

Each party was then given an opportunity to present their respective notebook of exhibits and evidence in support of their position on each of the three unresolved articles. Each party was then given an additional opportunity to present any rebuttal or additional information. Once I was sure no one had anything else to present, the hearing was closed. Based upon the evidence submitted at the hearing and the criteria outlined below, I submit the following analysis and recommendations:

FACT-FINDING CRITERIA

In determination of the facts and recommendations contained in this report, the I have considered the following criteria as enumerated in Ohio Administrative Code Section 4117-9-05(K):

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the 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;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agree upon dispute settlement procedures in the public service or in private employment.

FINDINGS OF FACT AND FINAL RECOMMENDATIONS

I am presenting my recommendations in order of importance to the parties instead of numerical order. It was very clear during the hearing that the number one issue concerning both parties is “wages.” My recommendations regarding this issue will also most likely impact my recommendations regarding the other two unresolved articles. Therefore, I am addressing Article 27, Wages as issue number 1.

ISSUE 1

ARTICLE 27 WAGES

Employer Position and Rationale: The Employer’s proposal at the time of the fact-finding was a \$1.00 per hour increase in year one of the agreement and a 3.0% increase in year two and three.

The Employer's proposal would maintain the current contract provisions regarding wage steps but eliminate the expired language in Section 27.1 regarding employees hired as of February 26, 2021 and the language contained in Section 27.3 regarding a signing bonus granted during the negotiation of that Agreement.

The Employer contends that the expired language in Section 27.1 no longer has any effect and therefore should be removed.

The Employer contends that the signing bonus contained in Section 27.3 was a one-time benefit granted to compensate employees for the moving of the effective date of wage increases from December 1 to April 1 and automatically expired in accordance with the terms of the current Agreement.

The Employer supports their wage proposal with a market survey of two similar size County Engineer Departments, the latest SERB Wage Settlement Survey, and exhibits and explanations of the County Engineer's limited finances. The Employer further contends that its proposed \$1.00 per hour increase is equivalent to nearly a 5.5% increase for some members of the bargaining unit and that its proposed 3.0% increases are well above increases granted in the previous contract.

The Employer objects to the Union's attempt to compare Monroe County to other much larger counties with greater revenue sources or counties with fewer roads and bridges to maintain.

Union Position and Rationale: The Union's proposal submitted with their submission statement requested a \$3.00 per hour wage increase, elimination of the wage steps based on months of service, and a \$1,000 signing bonus for year one of the agreement. In each of years two and three the Union requested a 6.0% wage increase.

The Union contends that the bargaining unit employees have fallen behind in previous years by accepting smaller increases in order to maintain the rest of the benefits outlined in the CBA, including a 0% increase in 2017. The Union further contends that bargaining unit employees' wages are substantially behind wages paid in neighboring and other Southeast Ohio County Engineer Departments. Finally, the Union contends that the employee's share of the health insurance rose by almost 15% this year and that this substantially reduces the benefits arrived from the \$1.00 per hour increase proposed by the Employer.

The Union supports its proposed increase by submitting copies of wage scales from eight (8) other County Engineer Departments. Finally, the Union submits a financial analysis of Monroe County prepared by the research department of AFSCME's national union office which the Union purports to be evidence of the Employer's ability to pay the proposed increase in wages.

Decision: In regards to the comparable wage data submitted by both parties; the Factfinder finds neither totally convincing. The Employer's wage data is from only two other County Engineer Departments. One of these is slightly smaller in population and the other has a slightly larger population. However, the Employer's wage comparables ignore other similar size counties in southeast Ohio. The Union's wage data is equally unreliable since it includes wage data from

counties with populations more than four times that of Monroe County and several counties with populations more than twice its size. This is a problem when you consider that population size definitely affects the amount of gasoline tax and license plate tax the County Engineer receives.

Therefore, I have sorted the data submitted by both parties and compiled my own analysis utilizing wage comparables from the following southeast Ohio Counties: Meigs, Morgan, Nobel, Pike, and Vinton. All of these counties are in the Southeast Ohio Region and have similar populations. According to my calculations using data from these five similar county engineer departments, bargaining unit employees are substantially behind their counter-parts in these other counties. This is probably due in part to the 0% increase granted in 2017 and the minimal increase granted the following year.

However, as previously outlined, the Ohio Administrative Code Section 4117-9-05(k) requires that a factfinder not only consider comparisons with wages paid to employees doing similar work in other jurisdictions but must also consider the public employer's ability to finance the recommended settlement. Based on the evidence presented at the hearing I believe the Engineer is faced with very limited revenues and ever-increasing costs. This belief is also supported by the financial analysis prepared by AFSCME's Department of Research and Collective Bargaining Services (Union Exhibit 10) which states that the County's General Fund Revenues decreased by 3.7% during the period reported in the latest financial reports. The Union's financial analysis also indicates that gasoline taxes, a major source of funding for road and bridge repair and maintenance, is expected to decline over the long term. I further believe the Engineer is attempting to do what she can about the wage comparables by offering a \$1.00 per hour increase in wages retroactive to April 1, 2024. While I understand that this increase will not close the wage gap to the extent the employees would like, I believe it is a step in the right direction which will give the parties something to build upon in future negotiations. I also believe \$1.00 per hour is a generous increase given the Engineer's current economic situation.

The \$1.00 per hour increase represents a 4.8% to a 5.2% increase in wages for the first year of the Agreement. This may appear excessive to the County Commissioners but in reality, still leaves a substantial gap between the wages paid in Monroe County and those paid in other similar engineer departments. I am recommending a \$1.00 per hour increase effective April 1, 2024.

During the fact-finding hearing the Employer submitted wage increase data compiled by SERB that shows the average percentage wage increases granted in southeast Ohio during the term of the current Agreement and the average increases negotiated for 2024 and 2025. That data clearly shows that the bargaining unit employees received slightly less than the average in 2022 and 2023 and would be below the average for 2024 and 2025 with a 3.0% increase.

While the employees can not expect to make up what they have fallen behind over the past several years in one set of negotiations; the County also should not expect the employees to continue to subsidize the County by working for lower wages than employees in similar County Engineer Departments in southeast Ohio. It is my understanding the County Commissioners do have the ability to provide additional funding to the Engineer or to increase the auto license fee in order to provide the Engineer additional funds.

Therefore, in order to keep the bargaining unit employees from falling any further behind, I am recommending an increase of 3.5% effective April 1, 2025 and an additional 3.5% increase effective April 1, 2026. By postponing the additional increase above that proposed by the Employer until 2025 and 2026, should give the Engineer and County Commissioners ample time to explore means of providing additional funding to the department.

In regards to the current pay steps, I am recommending no changes. Most of the other contracts I reviewed from similar size counties have pay steps. It is also not unusual to pay employees with less experience on the job a lower rate than employees who have been in the position a few years.

In regards to the expired language in Section 27.1. I agree this provision no longer has any effect and therefore should be removed.

In regards to Section 23.3 of the article, I agree this section has expired and is no longer needed in the contract. In regards to the Union's proposal for a new signing bonus, I can not recommend a signing bonus for two reasons. First, I do not believe the Engineer has sufficient funds available in her 2024 budget to grant a signing bonus in addition to the \$1.00 per hour wage increase. Secondly, if funds were available, they should be applied to the hourly rate as opposed to a signing bonus in order to further close the wage gap I have previously discussed.

This should be a package the bargaining unit employees can accept. It makes positive progress towards making up for previous shortfalls and adds an additional holiday as previously agreed to by the parties. The package also provides the Employer time to seek additional funding which will be needed not only for future negotiations but also to cover the increasing cost of materials, supplies, and equipment.

CONTRACT LANGUAGE AWARDED

ARTICLE 27 WAGES

Section 27.1. Wage Rates and Steps The rates of pay for employees are set forth in Appendix A. The wage rates will be effective the first full pay period after the date listed in the wage scale. The wage scale in Appendix A reflects the following wage increases:

- All Employees shall receive a one dollar (\$1.00) per hour across the board wage increase effective April 1, 2024
- All Employees shall receive a three and one-half percent (3.5%) across the board wage increase effective April 1, 2025
- All Employees shall receive a three and one-half percent (3.5%) across the board wage increase effective April 1, 2026.

The 4 steps in the pay scale for each classification will be as follows:

- Step 1 – Rate at time of hire at 80% of the full rate
- Step 2 – Rate months 6 through 12 at 85% of the full rate
- Step 3 - Rate months 13 through 24 at 90% of the full rate
- Step 4 - Rate 25 months and after full rate

Employees promoted to a higher paid classification will be placed at the rate which provides an increase in pay and will advance after the time provided in the scale, provided it does not cause them to make less than they make in their current classification. The Employer may hire new employees at Step 2 or 3 based on prior, related service to the position employed.

Section 19.2. Payroll System In the event the County Auditor implements a payroll system/pay stub that includes the employee's accumulated but unused vacation leave as well as the running total of vacation and sick leave used, the Engineer's employees shall be included.

APPENDIX A

APRIL 1, 2024 - WAGE SCALE

(\$1.00 Per Hour Increase)

	80%	85%	90%	100%
CLASSIFICATION	Probation Period (First 5 Months)	Month 6 – Month 12	Month 12 – Month 24	Month 25+
LABORER	\$16.20	\$17.21	\$18.23	\$20.25
TRUCK DRIVER	\$16.78	\$17.82	\$18.87	\$20.97
MECHANIC	\$17.12	\$18.19	\$19.26	\$21.40
GRADER OPERATOR	\$17.12	\$18.19	\$19.26	\$21.40
EQUIPMENT OPERATOR	\$17.12	\$18.19	\$19.26	\$21.40
EQUIPMENT OPERATOR 1	\$17.34	\$18.43	\$19.51	\$21.68
DRAFTING TECH 1	\$16.20	\$17.21	\$18.23	\$20.25

APPENDIX A (Continued)**APRIL 1, 2025 - WAGE SCALE****(3.5% Increase)**

	80%	85%	90%	100%
CLASSIFICATION	Probation Period (First 5 Months)	Month 6 – Month 12	Month 12 – Month 24	Month 25+
LABORER	\$16.77	\$17.82	\$18.86	\$20.96
TRUCK DRIVER	\$17.36	\$18.45	\$19.53	\$21.70
MECHANIC	\$17.72	\$18.83	\$19.94	\$22.15
GRADER OPERATOR	\$17.72	\$18.83	\$19.94	\$22.15
EQUIPMENT OPERATOR	\$17.72	\$18.83	\$19.94	\$22.15
EQUIPMENT OPERATOR 1	\$17.95	\$19.07	\$20.20	\$22.44
DRAFTING TECH 1	\$16.77	\$17.82	\$18.86	\$20.96

APPENDIX A (Continued)**APRIL 1, 2026 - WAGE SCALE****(3.5% Increase)**

	80%	85%	90%	100%
CLASSIFICATION	Probation Period (First 5 Months)	Month 6 – Month 12	Month 12 – Month 24	Month 25+
LABORER	\$17.35	\$18.44	\$19.52	\$21.69
TRUCK DRIVER	\$17.96	\$19.09	\$20.21	\$22.46
MECHANIC	\$18.34	\$19.49	\$20.64	\$22.93
GRADER OPERATOR	\$18.34	\$19.49	\$20.64	\$22.93
EQUIPMENT OPERATOR	\$18.34	\$19.49	\$20.64	\$22.93
EQUIPMENT OPERATOR 1	\$18.58	\$19.75	\$20.91	\$23.23
DRAFTING TECH 1	\$17.35	\$18.44	\$19.52	\$21.69

ISSUE 2

ARTICLE 14 HOURS OF WORK AND OVERTIME

Employer Position and Rationale: This proposal was initiated by the Employer in an attempt to reduce the amount of compensatory time employees may accumulate per year from the current limit of 80 hours to a maximum of 40 hours per year. In support of this proposal the Employer outlines all of the paid time off employees currently enjoy and points out that the employer has granted an additional paid holiday during the current negotiations. The Employer indicates a need for this change due to the limited number of employees available and the desire of most employees to use their compensatory time during the summer months when the department is busy with road and construction projects.

Union Position and Rationale: The Union proposes that Article 14 remain unchanged. The Union presented evidence that the current 80 hour cap has been in the Monroe County Engineer Agreement since at least 2002. The Union further presented exhibits showing that several counties in the region allow their employees to accrue 80 or more hours of comp time.

Decision: First of all, I find it interesting that the same employees who are complaining about not being paid enough are taking compensatory time off in lieu of overtime pay. The Employer also makes a reasonable argument regarding the impact that time off can have on the department's operations during the construction season. However, I am not convinced that eliminating 40 hours of compensatory time would solve the Employer's problem, since employees could request vacation time during the construction season. Furthermore, it appears the Engineer has language in the current contract to control how many employees can be off during these times. I also do not believe this is an appropriate time to try and reduce benefits when the employees are still attempting to catch up with the wages being paid in other similar engineer departments in the region. If time off is a major concern of the Employer, then maybe it should be explored with the Union at the bargaining table in future negotiations in conjunction with the wage issue. I do not find sufficient justification for removing a benefit that has been in the contract for over 20 years, given the current situation.

I therefore recommend that Article 14, Hours of Work/Overtime remain unchanged from what is contained in the current Agreement. Since I am recommending no changes in the current contract language, I find no need to include the specific language in this report. The current Agreement is a matter of record.

ISSUE 3

ARTICLE 23 VACATION LEAVE

Employer Position and Rationale: The Employer's proposal would add a new section to Article 23 which would permit employees to cash in up to 40 hours of vacation leave each year provided the employee has a balance of at least 80 hours of vacation remaining after the conversion. It is

my understanding that the Employer offered this proposal as a trade-off for the reduction in the amount of compensatory time the Employer proposed under Article 14. The Engineer also thought this proposal might be beneficial to those employees who otherwise might forfeit vacation due to having reached the maximum that can be accrued.

Union Position and Rationale: The Union was acceptable to the Employer's proposal to allow cash-in of vacation but was totally opposed to the trade off of reducing the amount of compensatory time employees may accumulate.

Decision: It would be unfair to award the Union a benefit that was offered as part of a package deal when the Union is not agreeable to the remainder of the package. Furthermore, granting cash-in of vacation would only increase the Engineer's cost if the employees are allowed to also continue to cash in the extra 40 hours of comp time.

Therefore, I hereby recommend that Article 23, Vacation Leave, Sections 23.2 through and including Section 23.8 remain unchanged from what is contained in the current Agreement. Since I am recommending no changes in the current contract language, I find no need to include the specific language in this report. The current Agreement is a matter of record. Section 23.1 of this Article was previously sign as a tentative agreement and the changes therein shall be incorporated into the new Agreement if my recommendations are accepted by the parties.

TENTATIVE AGREEMENTS

The Factfinder recommends the adoption of all of the tentative agreements presented by both parties at the hearing and previously referenced herein. The Factfinder further recommends that all articles reference herein from the previous Agreement which were not opened for negotiations by either party be incorporated into the new Agreement without change.

/s/ Pete B. Lowe
Factfinder

CERTIFICATE OF SERVICE

A copy of this Fact-finding Report and Recommendation was served on Deborah L. Chonko, Staff Representative, AFSCME Ohio Council 8 at 36 South Plains Road, The Plains, Ohio 45780 (dchonko@afscme8.org) and Jonathan J. Downes, Esq., at Zashin & Rich Co., LPA, 17 South High Street, Suite 900, Columbus, Ohio 43215 (jjd@zrlaw.com) and upon the Bureau of Mediation, State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213, MED@SERB.state.oh.us; each by electronic mail this 29th day of April, 2024.

/s/ Pete B. Lowe
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