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**STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING REPORT**

MAHONING VALLEY SANITARY DISTRICT)
)
EMPLOYER)
AND)
)
AFSCME OHIO COUNCIL 8 AFL-CIO)
LOCAL 1649)
UNION)

CASE NO.: 00-MED-04-0394

STATE EMPLOYMENT RELATIONS BOARD
JUL 1 10 50 AM '00

APPEARANCES

FOR THE EMPLOYER:

David Tabak	Chief Engineer
Martin Kielbasa	Resident Engineer
Erick Kist	Superintendent Pumping
Vincent Conoico	Attorney
John Zackasee	Superintendent Purification
Ed McCormick	Chief of Operations
George Joseph, Jr.	Hospitalization Agent
David Doak	Chief Deputy

FOR THE UNION:

James M. Adams, Jr.	Staff Representative
John D'Apolito	Vice President
Paul Bickerstaff	Recording Secretary
Robert J. Bodnar	President
James R. Williams, Jr.	Stewart Pump
Mike Hallock	Field Maintenance Stewart
David Ignazio	Purification Department

FACT-FINDER:

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INTRODUCTION

The undersigned was appointed by the State Employment Relations Board, hereinafter referred to as SERB. Contact was made with the representatives of the parties and on or about June 7, 2000, the parties agreed to a Fact-Finding Conference to be held on June 21, 2000. Position statements were timely served upon the respective parties and this fact-finder.

On June 21, 2000, the parties met to conduct a Fact-Finding Conference.

Before the Fact-Finding Conference was opened, the undersigned offered mediation to the parties and the parties accepted. An extensive mediation session took place, however, the parties were at impasse at all of their issues.

Upon the opening of the Fact-Finding Conference, the Employer presented its case first. Evidence and arguments were offered on each and every issue by both sides. After the Employer finished with its issues, the same procedure was utilized when the Union presented its case.

All exhibits were admitted. The parties stipulated that the new contract would be of a three (3) year duration commencing on July 1, 2000, and ending on June 30, 2003, at midnight. The parties further agreed that, if the fact-finding report was not rejected, then the contract would be retroactive to July 1, 2000.

CASE OF THE EMPLOYER

ISSUE NO. 1

DISCUSSION

Throughout the entire case, both by the Employer and by the Union, overtime is a serious consideration. The Employer complains that there is a disproportionate amount of overtime being paid to the employees and they manipulate the system to maximize the overtime that they are being paid. On the other hand, within a decade or a decade and a half ago, the overall personnel was fifty-two (52). Currently, the bargaining unit is thirty-two (32) employees. In other words, the undersigned finds that the same work is being done with approximately twenty (20) less employees from full employment.

At the outset, one need not be involved in the collective bargaining process to be aware that over the past several years, the operations of the MVSD has been in a state of flux. Its Board of Directors were drastically changed. Both members of the Board of Directors left their positions under a cloud of suspicion. One former Board Member stands convicted of felony charges involving the funds of the MVSD. Furthermore, those who have worked at the MVSD have had to deal with

the political decisions of two (2) major cities with the “water wars” between those cities and other political subdivisions in the area.

Both labor and management at the MVSD have been placed under a microscope by the local newspapers and the media. With all of this adverse attention and hostile publicity, the simple hiring of personnel probably would have turned into controversy. In spite of these problems, the men and women, both labor and management, have provided a quality service and product to over 300,000 customers.

The Employer proposes a change in the payment of overtime hours. The undersigned believes that new hiring to an optimal employee capacity will cause the overtime problem to dissipate.

Evidence was introduced that there were several new hirings of personnel. The undersigned finds that it is time for both labor and management to allow the addition of personnel to be up to full employment capacity. If this is allowed to happen, the undersigned finds that most of complaints regarding overtime will dissipate.

RECOMMENDATION

It is recommended that this proposal is not accepted and that the contract language stay the same.

ISSUE NO. 2

DISCUSSION

The Employer desires to eliminate the “meal ticket” procedure. Management states that meal tickets are antiquated and that the employees would be required to eat whether on duty or off duty. The management further states that refrigerators are located in the plant and that the employees can bring food from home and keep them in the refrigerators.

The Union states that an employee must work four (4) hours of overtime before a meal ticket is received. To ask the Union to forfeit the meal ticket would be asking for a concession. Furthermore, the employees are the ones that have brought in the refrigerators not management. The Union has stated that the meal ticket is an antiquated system and has requested that the Five Dollar (\$5.00) meal ticket go to Six Dollars (\$6.00) and be rolled into the employee’s pay. This addition to an employee’s pay has been rejected by the Employer.

Although the meal ticket is antiquated, it is a benefit for someone who is required to work four (4) hours overtime and it was a benefit won by the employees. There seems to be no reason why this amount of money should not be paid to an employee who works at least four (4) hours of

overtime. The amount of money received would barely cover the cost of a meal at a fast food restaurant.

RECOMMENDATION

It is recommended that the proposal by management not be accepted and that the section of the collective bargaining contract regarding meal tickets remain the same.

ISSUE NO. 3

DISCUSSION

In the Employer's position statement, they cite "ARTICLE XXI". However, the undersigned finds that the Employer is requesting a modification of "ARTICLE XIX".

It is the position of management to eliminate Sections 3 and 5 from the collective bargaining contract. The current contract requires that there will be no part time employees unless certain departments have minimum staffing. Furthermore, the contract also provides that no more than two (2) part time employees will be employed in any one classification. Management complains that because of the limited number of employees, skilled employees are called into overtime situations at time and one-half their rate for relatively menial tasks such as grass cutting or snow removal. Management complains that they are forced to use highly skilled employees and pay them at their skilled rate for tasks that laborers could do. Because of that reasoning, they want to be free to hire part time employees. Their rationale is that if they are permitted to hire part time employees it would cut down the amount of overtime and would not affect the salary or wage rate of the regular employees.

Union counters and says that the numbers set forth in the agreement are the least amount of operators to properly operate the plant. Furthermore, they fear that more part time employees would be used to get rid of the health care package. The Union further states that the numbers set forth in the current contract list have never been met.

The undersigned understands the concerns of the Union and management regarding this matter. Although flexibility is needed, management should bring its plant back to full capacity with the numbers set forth in the previous agreement. After they have set forth the numbers, perhaps it is time to allow the use of part time employees, if necessary. Bringing the plant to optimal employment capacity should be the first priority.

RECOMMENDATION

It is recommended that the proposal of the Employer be rejected and the contract stays as it is.

ISSUE NO. 4

DISCUSSION

The Employer wants to add proposed language giving priority to employees who have licenses to perform work. Those employees will be given preference and will be able to work up to wage scale more quickly.

The Union is concerned about the existing employees who are awaiting licenses. Their position is that those current employees should be given preferences. They want to protect the existing Union members and give those persons the opportunity to obtain a license. Management counters, saying that a person who goes out and gets a license will be rewarded. The Union states that it takes more than a year sometimes to get the license and, if someone is attempting to get the license, another person may be hired from the outside in their place.

The Employer is correct in its analysis. If there are vacancies that are anticipated, persons in the Union should anticipate and attempt to qualify themselves. If those current employees do that, then they would be next in line for any type of opening. However, if a position is needed with certain qualifications and there are no current employees to fill that qualification, the Employer should have the right to go outside the bargaining unit to fill that position. To decide otherwise would compromise production of the MVSD. Furthermore, the Union members have the "inside knowledge" of who is leaving. An employee with initiative will anticipate retirements and will be ready when the position becomes available.

RECOMMENDATION

It is recommended that the following language be added to Article V of the contract:

All jobs in the purification department will be awarded in the following preferable schedule:

- (a) qualified employees within the department holding at least a Class 1 OEPA Water Certification by seniority;
- (b) qualified employees outside the department holding at least a Class 1 OEPA Water Certificate by plant wide seniority;
- (c) qualified employees within the department;
- (d) qualified employees outside the department by plant wide seniority;
- (e) if there are no qualified employees who bid, the district may fill the vacancy from the outside.

ISSUE NO. 5

DISCUSSION

Management desires to create a two tier wage skill paying employees hired after July 1, 2000, \$4.50 less in wages in each separate classification as listed in Appendix B of the contract. Management says it will be a cost savings to the consumer.

Short term, this may be cost savings, however, in order to get quality people to handle the water supply for the Mahoning Valley, it is important that they be paid an appropriate wage. There has been no defense of inability to pay nor has there been any proposed language. Again, many of the employment problems have resulted from staffing below optimal employment capacity.

RECOMMENDATION

It is recommended that the proposal by the Employer not be approved and that the current contract stay the same.

ISSUE NO. 6

DISCUSSION

The Employer desires to tighten up the sick leave use. The Employer has produced no evidence that there are abuses with the use of sick leave. The Union urges that if there is any type of abuse, there is a discipline process to be used. The use of the discipline process in place would correct any abuses in sick leave.

RECOMMENDATION

It is recommended that this proposal not be approved and the current contract language stay the same.

ISSUE NO. 7

DISCUSSION

Besides wages, the providing of hospitalization/medical insurance is the most costly benefit provided to all employees, and it is the benefit most zealously guarded by the Union.

Currently, the hospitalization carrier for the employees at the Mahoning Valley Sanitary District is Anthem. There is a split system with a significant part of the parties being on a PPO and

the remaining employees involved in an HMP. It appears that Anthem is the only health insurance carrier that provides what management calls an antiquated HMP program. Because Anthem is the only provider of an HMP, Anthem has a monopoly. There is no competition. Therefore, the price is not contained and the price is driven up each and every year. Management contends that by moving from an HMP to a PPO, thousands and thousands of dollars can be saved and still provide virtually the same type of health care benefits as all the employees now enjoy.

During the history of negotiations in this same contract, concessions were taken by the Union in health care to keep what they now have. Now, in this contract, the Union claims that moving from an HMP to a PPO and to a different company would cause them concessions in drug cards, maximum payouts, and co-pays for office visits. The Union also claims that although the MVSD budgets a certain amount of money each year for health insurance premiums, that budgeted amount has never been met and there is a "paper savings" at the end of each and every year. This would prove, as stated by the Union, that the Union employees are not abusing the health care benefits that they are now receiving.

The savings that management claims that it can make by switching health care coverage from Anthem to United is not confirmed. The employees would still be required to provide health care information to determine the actual rate. In fact, the actual rate could be higher than the one quoted by Anthem. There is a stumbling block in attempting to get the actual rate. The Employer needs the health information of each and every employee so that it can get a firm rate from those who would bid. With this new information, the Employer is then charged to "shop around" for and/or apply for better rates and then to collectively bargain with the Union for a change in the health care provider.

On the other hand, the employees are concerned about privacy issues. If they are required to give their health care information to the Employers, they fear that said information would be used against them somehow.

With the number of employees involved with the cost of this benefit, it is crucial that the employees give their medical information so that the Employer can "shop around" and or apply for a new health care provider when necessary. On the other hand, there must be measures taken within the contract that would prevent the Employer from disclosing that information to anyone other than an insurance company or other health care provider in order to obtain premium rates.

Therefore, the undersigned will not recommend a change at this time for health insurance coverage. However, the undersigned does recommend that the employees give to the Employer any and all health care information necessary and proper for the Employer to shop for better rates for all the employees. With this new information, the Employer is then charged to "shop around" for and/or apply for better rates and then to collectively bargain with the Union for a change with the health care provider.

RECOMMENDATION

It is recommended that the hospitalization/medical insurance clause under ARTICLE XXVI, Section 1 remain the same except that the following paragraph shall be inserted into the contract:

“The Employer shall designate one person to receive the medical history and other related information necessary and proper for the MVSD to “shop” and/or “apply” for hospitalization/medical insurance for the MVSD. That designated person must be approved by the Union and must be reapproved each contract year. (July 1 - June 30).

Once designated, the Union shall have thirty (30) days to vote on the designated person. If the Union does not vote within the thirty (30) days, then that person shall be deemed approved. Said approved person shall collect all necessary and proper information required to “shop” and/or “apply” for hospitalization/medical insurance for the MVSD. Said approved person shall use that information only for the purposes of “shopping” and or “applying” for better rates for hospitalization/medical insurance for the MVSD. No person, whether that person is a member of the management or the Union or an agent thereof, shall use this information for any other purposes. The only other persons, who may use or possess the information, are clerical or secretarial personnel, who are aiding the approved person in shopping and/or applying for better hospitalization/medical insurance for the MVSD. No person, other than the approved person, shall possess that information.

If the approved person resigns from her/his post, then a new person must be approved by the Union. Approval of the Union shall be by majority vote at a regular or special meeting of the Union.

Any person knowingly using or knowingly possessing this information for any other purpose other than the purposes set forth above, shall be disciplined and may be terminated.

Any employee who fails to provide complete and truthful medical health insurance information in order for the approved person to shop for and/or apply for hospitalization/medical insurance shall be disciplined and may be terminated.

ISSUE NO. 8

DISCUSSION

The Employer has proposed mandatory drug and alcohol testing. The Employer states that the water that they deal with is as important as the air we breathe. It maintains that these policies have been held constitutional under state and federal law and further states that “if you don’t have

a problem, there is no concern". The policy essentially states that there shall be a drug and alcohol free work place. The proposal has rules concerning the possession of contraband including drug paraphernalia, weapons, firearms, explosives, incendiaries, stolen property, counterfeit money and pornographic materials on the premises.

The proposal permits a search which would include body invasive searches if the Employer had reasonable belief of drug or alcohol impairment. It further requires random drug test for safety sensitive positions. It further requires for unannounced general inspections and searches for drugs and alcohol on MVSD property. The above are only a small summary of the many provisions in this drug and alcohol policy.

Until fact-finding, the Union had not seen this proposal. The Union agrees that a safe work place is a goal of the Union.

The undersigned is sensitive to the safety concerns of the Employer. However, when questioned about whether or not there are any facts that would support evidence of alcohol abuse, drug abuse, or contraband abuse on the premises, the Employer offered no testimony or any evidence that there was any type of abuse from any employees. The Employer stated that there were "suspicions".

As was stated earlier, the MVSD has been in the midst of a scandal for the past several years. There have been sweeping changes in the MVSD. In these situations, there is a tendency to take measures which actually infringe upon human and constitutional rights of all the employees of MVSD in the name of "reform". This effort at this time, without any notice to the Union, appears to the undersigned to be one of those crusades.

A safe work place does mean a work place without alcohol, drugs or contraband. It also means, however, a work place without unreasonable searches and seizures. In the industrial setting, drastic changes require collective bargaining.

This is a matter for collective bargaining. If there is evidence of alcohol abuse, drug abuse or contraband abuse, then management has the right to proceed with the discipline process. It further has the right to collectively bargain with the employees for a type of drug, alcohol or contraband policy. In absence of any evidence of wrong doing or problems and in absence of an attempt to collectively bargain this matter, the fact-finder cannot in good conscience recommend a unilateral deprivation of or infringement upon individual rights.

RECOMMENDATION

It is recommended that the proposal of the Employer not become part of the contract and that the contract remain the same regarding these matters.

ISSUE NO. 9

DISCUSSION

The Employer desires to terminate an employee who is not able to return to work within one hundred eighty (180) days from the date of injury or illness. The major concern of the Employer is that an employee may be off for years, still collecting MVSD benefits, and the Employer cannot terminate this employee. The Employer makes a compelling argument that these types of employees become drains on the systems and should be terminated from the MVSD at some point in time.

The Union understands the problems and requests a three (3) year time period before termination. They state that the workers' compensation system and the social security system have cases that take longer than three (3) years.

The undersigned agrees with the Employer that there has to be a certain period of time after which that employee may be terminated by the Employer. If not, there would be a serious strain on the taxpayers' money and there would be a real concern that the employee, who is off because of injury or illness, would be receiving double benefits.

On the other hand, if someone is injured on the job, it is not uncommon for workers' compensation cases to take two to three years to complete. The common pleas docket for both Trumbull and Mahoning Counties is well in excess of eighteen (18) months. The common pleas court cases and workers' compensation cases take place only after the administrative process. This eighteen (18) months does not include the docket in the appellate courts. The social security process takes a similar amount of time. Therefore, there should be a date upon which termination should be had by the Employer, but that time must give the employee enough time to obtain benefits through administrative and legal channels. The recommendation of the Union seems to be reasonable in light of the docket for the local courts.

RECOMMENDATION

It is recommended that the following paragraph be inserted under Article XXVII as Section 7. (a new section):

“An employee who is unable to perform duties due to an injury or an illness shall be terminated from employment with the district if the employee is not able to return to work within three (3) years from the date that the employee is first off work as a result of said injury or illness. Accumulated sick leave and vacation time may be used to extend the date of termination to the extent that all such sick leave and vacation is exhausted. The use of sick leave and/or vacation must be used to the fullest extent permitted by any and all areas of disagreement. Failure to use the maximum permitted sick leave or vacation will not extend the termination date longer than what the termination date

would have been had the maximum amount of sick leave and/or vacation leave been used”.

CASE OF THE UNION

ISSUE NO. 1

DISCUSSION

The Union desires that for purposes of computing overtime pay, that holidays, vacation leave, sick leave and personal leave shall be considered as hours worked.

The management states that introducing this type of language for computed overtime would be rewarding employees for poor attendance. There would be no incentive to come to work and this would cause costs to increase.

The undersigned finds that overtime should be paid for hours worked. Overtime pay should not be based on holidays, vacation and especially sick and personal leave. In order to qualify for overtime, one must work the specific amount of time. Otherwise, using other benefits for computing overtime pay is pyramiding.

RECOMMENDATION

It is recommended that the overtime language remain the same and that the proposal of the Union not be accepted.

ISSUE NO. 2

DISCUSSION

The Union proposes a new policy for temporary transfer from one job classification to another by the overtime procedure set forth in ARTICLE IX of the Collective Bargaining Agreement. In other words, before there can be a transfer, there must be minimum staffing. The new section proposed allows for the MVSD to have the authority to circumvent the overtime procedure in the case of an emergency.

The management claims that the Union is attempting to make management use employees who must be paid overtime instead of doing their job of directing the work force. Management states that this proposal is one of the many instances where the Union wants to force Management to use overtime when the use of other non-skilled workers could be utilized. It is the contention of

Management that this is an attempt to gain overtime by the Union "every step of the way".

The personnel of the MVSD is below optimum capacity for employment. The undersigned believes that, if the district continues to add regular full time personnel, these problems of transfer and overtime will dissipate.

RECOMMENDATION

It is recommended that the proposal implementing a restriction on temporary transfer from one job classification to another is not accepted and the contract language remain the same.

ISSUE NO. 3

DISCUSSION

The Union is proposing that the MVSD not be permitted to engage private contractors to do work normally performed by bargaining unit employees if the number of full time employees goes below a certain number of employees.

The undersigned believes that this is another situation where there are problems that may dissipate if there are more full time employees hired to bring the MVSD up to optimum capacity. The undersigned would refer the reader to the above issue for an explanation.

RECOMMENDATION

It is recommended that the proposal under Issue 3 by the Union not be implemented and the contract language remain the same.

ISSUE NO. 4.

The Union wishes to include in bereavement leave the employees' parent-in-law. They further would request that the leave not exceed four (4) working days off with pay. In reviewing the current benefit that the employees have and other contracts, the undersigned believes that the contract is satisfactory.

RECOMMENDATION

It is recommended that the proposal of the Union to change the bereavement leave not be accepted and that the contract remain the same.

ISSUE NO. 5

The Union wants an employee who is on paid sick leave status to receive holiday pay and not sick leave when a holiday falls within the leave. The undersigned disagrees with this request. If a person is on paid sick leave status, that person is sick. Sick leave is for people who are sick. It should not be used for any other purpose.

RECOMMENDATION

It is the recommendation that Article XXI, Section 1(a) remain the same and that the Union recommendation not be accepted.

ISSUE NO. 6

The undersigned has been presented evidence by both parties regarding the wages. The undersigned finds that the current wage being paid to the Union members is a wage rate that should be increased. The Union is in a Class 4 Water Treatment Plant and the men and women who work with the district work long hours. As was discussed earlier, these long hours and overtime are probably a result of a hiring freeze that took place while this public scandal was going on. The undersigned hopes that the district will hire more full-time people in order to reduce the amount of overtime currently necessary to operate the plant. More full-time people will cut down on the overtime and permit the district to afford more qualified full-time people. It should be noted that the Mahoning Valley Sanitary District did not make inability to pay one of the defenses to the wage rate requested by the bargaining unit. The undersigned is recommending a twelve (12) percent pay increase over a three-year period.

RECOMMENDATION

It is the recommendation that the following language be made part of Article XXII, Section 1 of the collective bargaining contract:

“The wage scales as set out in the Appendix B attached hereto shall be adjusted as follows: Effective July 1, 2000, the wage rates for all bargaining unit classifications shall increase by three (3) percent. Effective July 2, 2001, wage rates shall increase by five (5) percent. Effective July 1, 2002, wage rates shall increase by four (4) percent.”

ISSUE NO. 7

The Union seeks to increase the length of vacation set forth in Article XXIII, Section 1. The undersigned finds that the employees are some of the best paid employees with some of the best hours

of vacation. In order for the monetary benefits to be enjoyed by the workers, they must be at work to work. Therefore, the undersigned recommends that Article XXIII, Section 1 not be placed into the contract.

RECOMMENDATION

It is the recommendation that Article XXIII, Section 1, as proposed by the Union not be changed and that the contract remain the same.

ISSUE NO. 8

The Union requests an additional holiday to-wit: the day after Thanksgiving. The undersigned believes after hearing all the evidence and looking at the contract that the employees receive enough paid holidays.

RECOMMENDATION

It is recommended that the day after Thanksgiving not become a paid holiday, and that the contract language remain the same.

ISSUE NO. 9-A

The Union requests that the District provide a \$10,000.00 paid in full life insurance policy for all bargaining unit employees that retire from the district. The employees did not present any supporting evidence as to the cost of this for the District. Without the known cost, we cannot add it to the budget of the MVSD.

RECOMMENDATION

It is recommended that the request for the life insurance as set forth above not be placed in the contract and it is recommended that the contract language stay the same.

ISSUE NO. 9-B & 9-C

These issues will be taken together because the Union requests the Employer pay the premium cost for employees' coverage for dental level 2 and hearing aid benefits provided by the Ohio AFSCME Care Plan. The cost to the district for that plan would be \$40.75.

The undersigned believes that these requests fall directly in line with the health care benefits plan. If the information was available to check whether or not this cost of these benefits is a good

cost for the benefits to be received, then the undersigned would have no problem in recommending these benefits be paid by the Employer. However, there is nothing to compare with. It is urged that the employees make their health care histories known to the Employer in the procedure set forth above so the Employer can determine whether or not the cost of these benefits is reasonable. Furthermore, if somebody had this information and was able to make a comparison, both Union and Management could decide whether or not the cost of these benefits are worth paying for. Until information is received by the employees about their health care, it will be impossible to determine whether or not these benefits could be obtained elsewhere at a better cost.

RECOMMENDATION

It is recommended that the contract language set forth in Issues 9-B & 9-C not become part of the contract and the contract language remain the same.

ISSUE NO. 10-A

Longevity Pay. The Union desires to double the amount of longevity pay for its employees. Although longevity pay is important because experience is important, the undersigned does not find that doubling the longevity pay is reasonable.

RECOMMENDATION

It is recommended that the request for increased longevity pay not be placed in the contract and that the contract language remain the same.

ISSUE NO. 10-B

The Union proposes an increase in mileage for privately used vehicles to the amount of thirty-two (32) cents per mile. The Union also requests an increase in the meal ticket from \$5.00 to \$7.00. In the alternative, the Union states that it wants \$6.00 in a stipend pay. The parties have agreed to thirty-one (31) cents per mile for travel. The undersigned finds that reasonable. The employees have also requested an increase to \$7.00 for the meal ticket, but have stated in the alternative they would want \$6.00 in a stipend in their pay. The undersigned has addressed this in a previous issue with management.

RECOMMENDATION

It is recommended that the contract be amended to reflect that "all employees who are required by the district to use their personal automobiles for district business shall be reimbursed for such use at a rate of thirty (31) cents per mile." The undersigned does not recommend that the meal

ticket increase or the stipend be increased or placed in the contract and the undersigned refers the parties to the recommendation set forth in the Company's case regarding meal tickets.

ISSUE NO. 10-C

The Union requests that when employees are required to be out of town on business for the MVSD, said employee should receive \$35.00 per day for meals and \$75.00 per day for hotel expenses. Currently that amount is \$20.00 and \$50.00 respectively. The parties have agreed that this item shall be deleted from the contract. The parties further agreed that this issue be in the policy statement for the employees.

RECOMMENDATION

It is recommended that this item not be addressed in the collective bargaining agreement but that this issue be addressed in the policy statement of the Employer.

ITEM NO. 10-D & 10-E

The employees request an increase in rates for class certifications I, II, and III, and the Union desires that the district pay the full cost for employees who were required to obtain license recertifications, mandated continuing education courses, or any job related licenses. The undersigned believes that it is important that employees maintain the certifications necessary for the jobs that they are holding. However, the undersigned is sensitive to the district's contention that it should not pay for educational expenses that are not required to hold the job that they are currently performing.

There is a problem that currently exists. Sometimes it takes six (6) months to a year to obtain these certifications because tests are given only at certain times of the year. If an employee would take the initiative to actually pay for education and then obtain a job at a higher level, then the employee should have the Employer reimburse him for the costs of those courses. Obviously, there has to be time limits so that the costs are known. However, this would show incentive on the part of an employee to better himself or herself and in the process better the production of the Employer.

RECOMMENDATION

It is recommended that the language of the rates for the class certifications remain the same, and that the increases proposed by the Union not be placed in the contract. However, Article XXVII, Section 8 should read as follows:

“The district shall pay the full cost for employees who are required to obtain license recertifications, mandated education courses, or any job-related licenses or certifications so long as the cost expended for this education, licenses, or certifications occurs within eighteen (18) months prior to or after the employee obtains the job which requires, said education, license and/or certification.”

ISSUE NO. 11

The Union requests that there be an increase from twenty (20) cents to seventy-five (75) cents for those who have a CL2/Alkalinity license. Management counters and says that it is not worth more than thirty (30) cents an hour. The undersigned now is of the opinion that there needs to be some type of increase; however, the increase must be fair in light of all matters.

RECOMMENDATION

It is recommended that there should be an increase in pay under Article XXVIII for a CL2/Alkalinity license to the amount of fifty (50) cents. It is recommended that the contract shall be amended to reflect this change.

ISSUE NO. 12

The Union desires that the Mahoning Valley Sanitary District provide a ten (10) cent additional per hour for employees maintaining and rebuilding chlorine regulators. They cite that this is a dangerous condition and that it is a safety factor and that they should be receiving an additional amount of money because of the safety.

Management counters that performing this job has been there since the beginning. It is not unusual and there is no license or certification requirements that are required.

The undersigned finds that this job of maintaining and rebuilding chlorine regulators has been part of the job all along. It does not seem extraordinary nor are there any extra licenses or certifications necessary to perform this task.

RECOMMENDATION

It is recommended that this proposal not be accepted and that the contract language remain the same.

ISSUE NO. 13

The parties agreed for an increase allowance of \$550.00 per year for the uniforms of the patrolmen. The undersigned finds that this is reasonable.

RECOMMENDATION

It is recommended that Article XXVII, Section 5 be increased to the amount of \$550.00 per year for uniform allowance.

ISSUE NO. 14

The Union requests that for an employee to be eligible for holiday pay, an employee must be on the active payroll, on worker's compensation, and not on leave of absence or lay off. An exception will be made in the case of an employee working the holiday. The employees want the phrase "on worker's compensation" to be added. The undersigned has weighed the arguments of both management and labor. Holidays are for workers who are on the job. For those who are not on the job, and who are injured on the job, worker's compensation is their remedy and their payment.

RECOMMENDATION

It is recommended that the request of the Union to change Article XXIV, Section 4, not be accepted and that the contract language remain the same.

ISSUE NO. 15

The Union seeks to place a limitation on the chief engineer requiring proof of sickness. They request that an employee on sick leave must furnish satisfactory proof of sickness only after three (3) consecutive days. In other words, if an employee is off three (3) consecutive days, then and only then, may the chief engineer request a doctor's excuse.

The flu and the common cold many times take more than three (3) days to get better. Many times, a doctor cannot help the person and simply tells the person to stay in bed and drink liquids. To require the employee then to go to the doctor and ask for an excuse from the doctor will only cost the employee money. Physicians now charge for letters of sickness. This limitation is reasonable. To request a doctor's excuse after one (1) days is simply unreasonable.

RECOMMENDATION

It is recommended that Article XXI, Section 1(d) read as follows:

“The chief engineer may require the employee to furnish satisfactory proof that the absence was due to one of the causes for which sick leave may be used, if the employee is absent more than three (3) consecutive days of sick leave usage.”

ISSUE NO. 16

The parties request that the parties meet and discuss the feasibility of implementing an early retirement buy out program in the first year of the new agreement. In other words, the Union wishes to use the contract to force management to discuss the implementation of an early retirement buy out. While the undersigned believes that it is always best that labor and management meet and discuss all financial matters, the undersigned does not have any facts or circumstances that would compel the parties to meet and discuss this financial issue.

RECOMMENDATION

It is recommended that the proposal of the Union not become part of the contract and the contract language remain the same.



Handwritten signature of Joseph W. Gardner in cursive script, positioned above a horizontal line.

JOSEPH W. GARDNER, # 0033400

Attorney-at-Law/Arbitrator

4280 Boardman-Canfield Rd.

Canfield, OH 44406

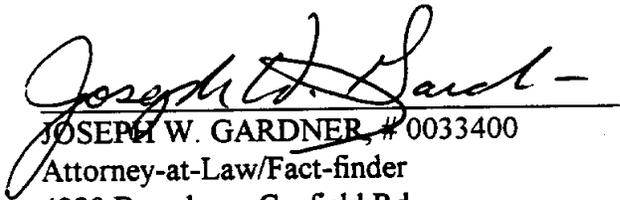
Phone: (330) 533-1118

Fax: (330) 533-1025

CERTIFICATION

A copy of the foregoing Fact-Finding Report was forwarded to **DAVID TABACK**, Chief Engineer, Mahoning Valley Sanitary District, P.O. Box 4119, Youngstown, OH 44515-0119; and **JAMES M. ADAMS, JR.**, Staff Representative, AFSCME Ohio Council 8, 150 South Four-Mile Run Rd., Youngstown, OH 44515-3137, via Overnight, Certified Mail on the 6th day of July, 2000.

A copy of the foregoing Fact-Finding Report was forwarded to: **GEORGE M. ALBU**, Administrator, Bureau of Mediation, SERB, 65 East State Street, 12th Floor, Columbus, OH 43215-4213; **VINCENT CONOICO**, Attorney for Management, 159 E. Market Street, #300, Warren, OH 44481; and **ROBERT J. BODNAR**, Union President, 17020 Heiser Road, Berlin Center, OH 44401 via regular U.S. Mail on the 6th day of July, 2000.


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