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STATE EMPLOYMENT
RELATIONS BOARD

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**FACT-FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
OCTOBER 5, 2000**

In the Matter of)	
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)	
The City of Warren)	
)	
)	
And)	00-MED-07-0777
)	
)	
Warren Management Association)	

APPEARANCES

For the City of Warren

**Gary C. Cicero, Director, Human Resources
Brian Massucci, Personnel Supervisor**

For the Warren Management Association

**David J. Robison, President
Larry Bollino, Chief Steward**

Fact-Finder: Marc A. Winters

BACKGROUND

The Fact-Finding involves the City of Warren, (hereafter referred to as the "Employer") and the Warren Management Association, (hereafter referred to as the "Union"). The Union's bargaining unit is composed of twenty-three (23) white-collared positions which came into existence in April, 1997, in accordance with SERB rules. The State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder in this matter.

The Fact-Finding Hearing was conducted on Wednesday, September 27, 2000, in the Warren Community Center Building. The Fact-Finding began at 9:00 A. M. and was adjourned at 10:30 A. M. At the beginning of the Fact-Finding Hearing mediation was offered and subsequently declined by both parties.

The Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statute set forth in rule 4117. Rule 4117-9-05 sets forth the criteria the Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. 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.
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issue proposed and the effect of the adjustments on the normal standards 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 private employment.

The following issues were considered at the Fact-Finding Hearing on September 27, 2000:

1. Pay Rates
2. Position Adjustments
3. Pay Variations, Chlorine Testing
4. Pay Variations, Hazard Duty Pay
5. Pay Variations, Call Out Pay
6. Pay Variations, Telephone Assistance Pay

7. Longevity
8. Layoff and Recall
9. PERS Agreement
10. Life Insurance

Issue 1: Article 14: Pay Rates

Union Position: A wages “me-too-clause” same as other City groups

Employer Position: The City offers 4% each year for two years.

Discussion: The City has offered a 4% wage increase each year. The City Fire Fighters were awarded 4% each year by a conciliator. The City wishes to treat this WMA equally.

The Union seeks a “me too clause” with any other group or union within the City. AFSCME Local 74, another City Union, had a fact-finder recommend 4% and 5% for two years.

Finding of Fact: Based upon the facts and documentation submitted by the parties, including the fact that the AFSCME fact-finding report was not accepted, it is my recommendation that the wages be as follows:

Effective 1/1/2001 - 4%

Effective 1/1/2002 - 4%

Issue 2: Article 14: Position Adjustments

Union Position: First, that the bottom level pay in the WMA be combined with the next level above to insure appropriate pay separation, and second, the Building Official and the Urban Design & Grants Coordinator positions should be moved up one level to achieve parity.

Employer Position: The City rejects the Union’s demand.

Discussion: It is the WMA’s position that several positions within Local 74’s bargaining unit are paid more than the members of the WMA who oversee these positions in Local 74.

Example: the WMA positions, Water Plant Maintenance Supervisor, Water Pollution Control Plant Maintenance Supervisor, Operations Supervisor, Water Office Manager and Assistant Auditorium Manger all with in the same level of the WMA have a base pay of \$22.12 per hour, or \$46,009.60 annually. Last year the Pumping Station Mechanic earned \$47,028.95.

Therefore the WMA requests the bottom level of pay in the WMA be combined with the next level above to insure appropriate pay separation and incentives.

Additionally, the Building Official should be moved up one level to achieve parity with the Assistant City Engineer and the Planning Director positions. These three positions function as the second in charge in the absence of the Director of Engineering, Planning and Building.

Finally, the Urban Design & Grants Coordinator position serves as the second in charge in the absence of the Executive Director of Community Development. Most seconds are three levels below the Director's position. The Urban Design & Grants Coordinator is four levels below, therefore should be elevated one level.

The City contends that in 1985, a Blue Ribbon Committee was established to review the existing compensation structures for non-bargaining unit employees, which the WMA employees were at that time, and make recommendations for improvements and/or modifications where necessary. The committee devised a salary structure for the value of the positions surveyed. The City believes the Blue Ribbon Committee's report should be kept intact unless the jobs have changed.

Finding of Fact: Upon carefully considering all evidence presented I find that the work the Blue Ribbon Committee accomplished should not be undone at this time. The request by the Union to raise the bottom level pay was not supported by reason or evidence other than one example. That example, the pumping station mechanic, earned more than those supervisors because of the amount of overtime he worked not because his salary or hourly rate was higher than the supervisors. Had the pumping station mechanic's salary or hourly wage been higher than the supervisors in question, than I would have agreed with the Union.

Likewise, the Union did not prove that the content of the job has changed, for the Building Official and the Urban Design & Grants Coordinator, whereas to warrant a movement upwards. As stated above, the work of the Blue Ribbon Committee should not be undone without justification of content change within the job itself.

Issue 3: Article 15: Pay Variations: Chlorine Testing

Union Position: The Operations Supervisor and the Water Service Supervisor should receive \$43.33 per month after attaining a certificate of approval for chlorine testing.

Employer Position: The City rejects the Union's demand.

Discussion: The Union argues that the positions of Operations Supervisor and Water Service Supervisor within the Water Department should receive compensation in addition to their respective regular rate in the amount of \$43.333 per month after providing sufficient evidence of the attainment of a certificate of approval for chlorine testing.

The WMA cite members within Local 74 receive this benefit. The WMA further cites the Operation Supervisor and Water Service Supervisor oversee the employees within Local 74 who receive this benefit and are responsible for the correctness of their reports.

The WMA seeks to attain parity.

The City contends that the chlorine testing has always been part of the Operations Supervisor's job. He works as a Chemist. Therefore There is no justification for additional pay for the chlorine testing.

The City further contends that there are three other employees who work for the Water Service Supervisor who performs the chlorine testing. There is no need to have the Water Service Supervisor perform chlorine testing.

Finding of Fact: Based upon all evidence presented it is my opinion and finding that the WMA's request is reasonable. The Operations Supervisor and the Water Service Supervisor should receive the pay variation for chlorine testing since number one, it is in their job description that they be able to perform such a test; and second, the employees they supervise do receive that benefit for being able to perform that same test.

Issue 4: Article 15: Pay Variations: Hazard Duty Pay

Union Position: The Union request \$0.20 per hour hazard duty pay for employees who work the Water Pollution Control Department, Water Filtration Plant and Water Distribution and Service Divisions of the Water Department.

Employer Position: The City rejects the Union's demand.

Discussion: The Union request in addition to their regular rates of pay, all employees who work in the Water Pollution Control Department, Water Filtration Plant and the Water Distribution and Service Divisions of the Water Department shall be paid an additional \$0.20 per hour for exposure to harmful pathogenic bacteria and other harmful substances.

The WMA argues that members of Local 74, with whom WMA members oversee and work along side of, receive this benefit.

The City contends that this benefit was phased out in the nineties (1990's) with additional increase in the pay rates. Therefore there is no justification to again include it as a benefit.

Finding of Fact: Based upon the testimony and the information presented, I find that the WMA members work under the same conditions as the people they supervise and work along side of in Local 74's membership. The WMA members should be entitled to the same benefit.

Suggested Language: Article 15 Item 8 - Hazard Duty Pay

An additional twenty (.20) cents per hour or compensation equal to twenty (.20) cents per hour for all hours worked shall be paid to all employees who work in the Water Pollution Control Department, Water Filtration Plant and Water Distribution and Service Divisions of the Water

Department for exposure to harmful pathogenic bacteria and other harmful substances.

Issue 5: Article 15: Pay Variations: Call Out Pay

Union Position: The Union request a four hour call out pay, the same as the employees the WMA oversees and work along side.

Employer Position: The City rejects the Union's demand.

Discussion: The Union contends that in addition to their regular rate of pay that all members of the WMA recalled to work after the employee has completed their regularly schedule work day and has left their respective department should be paid a minium of four hours pay at the rate of time and one-half for all such call outs, or actual time spent on the call out at the rate of time and one-half, which ever is greater.

The WMA argue that members within Local 74 receive this benefit and that the WMA members oversee and work along side these Local 74 employees who receive this benefit.

The WMA wishes to seek parity.

The City contends that any employee who needs called out carries a pager and receives Standby Pay. The City feels this is sufficient compensation for a call out since they are paid for hours they go out on a call and the WMA members have some discretion in how they work a call out.

Finding of Fact: Based upon the evidence presented I find that the WMA proposal to be reasonable. The Standby pay is for wearing the pager and being ready to interrupt their life twenty four hours a day not for handling the actual call. The WMA should be paid the same as the employees they oversee and work along side of when called out after their regularly scheduled work day.

Suggested Language: Article 15, Item 9 - Call Out Pay

Call Out pay is defined as being recalled to work after the employee has completed their regular work day and has left the department. Pay for such call out time shall be a minimum of four (4) hours pay at the rate of time and one-half (1-1/2) for all such call outs, or actual time spent at the rate of time and one-half (1-1/2) whichever is greater.

Issue 6: Article 15: Pay Variations: Telephone Assistance Pay

Union Position: The Union request pay for using their telephone or radio for work related calls after they leave work.

Employer Position: The City rejects the Union's demand.

Discussion: The Union contends that they should receive telephone assistance pay for handling a work related problem by the telephone or radio after the employee has completed their regularly scheduled work day. The Union request an amount to paid at the minimum of one (1) hours pay at the rate of time and one-half (1-1/2) for all such telephone assistance or actual time spent on the telephone assistance at the rate of time and one-half (1-1/2), whichever is greater.

The WMA argue that this benefit is given to the Police Department's Gold Unit and the WMA seek parity.

The City argues that this benefit is not necessary nor can it be justified fiscally.

Finding of Fact: Based upon the testimony and evidence presented it is my finding the WMA did not prove a telephone assistance pay to be necessary or reasonable.

Issue 7: Article 16: Longevity

Union Position: The Union wishes to increase it's memberships longevity pay by \$1.00.

Employers Position: The City rejects the Union's demand.

Discussion: The Union wishes to increase it's members longevity pay as follows:

Effective 1/1/2001 increase from \$6.00 per month to \$7.00 per month

Effective 1/1/2002 increase from \$7.00 per month to \$8.00 per month

The Union argues that the Local 74 Fact-Finder's report recommends an increase in longevity pay for that bargaining unit.

The City argues that the current contract language is sufficient. With the City's current financial situation, an increase in longevity pay is not warranted.

Finding of Fact: Based upon all evidence and testimony presented I find that the WMA's request in this area to be unreasonable. The WMA, who consistently has argued parity at this hearing, receives a longevity benefit equal to or greater than all other City Unions. Even the increase recommended in the Local 74 fact-finders report does not equal what the WMA receive.

Issue 8: New Article 34: Layoff and Recall

Union Position: The Union seeks to attain a layoff policy similar to other groups and unions.

Employers Position: The City proposes language for a layoff procedure similar to Local 74.

Discussion: The City and the WMA cannot come to terms regarding how the layoff policy should be worded. However, it is clear that they both want a layoff and recall policy. Each party has submitted their own version of layoff and recall language.

Finding of Fact: Both the Union and the City request that the layoff and recall language be similar to other groups and unions. The WMA submitted language but failed to identify any other group or union that had that specific language. On the other hand, the City's proposed language is the same as Local 74's. I hereby find that the appropriate layoff and recall language to be that of the City's since the WMA members oversee and work along side of the Local 74 members.

Suggested Language: Attached

Issue 9: New Article 35: PERS Agreement

Union Position: The Union seeks to have the City pay their members share of their contributions to the PERS pension plan (8 1/2% of each employees gross wage)

Employers Position: The City rejects the Union's demand.

Discussion: The Union argues that they wish to seek parity with other Unions and non-union groups within the City, who all have had this benefit over the past several years. The Union further argues that over 40 non-bargaining unit employees currently receive this benefit along with over 200 Local 74 members.

The Union also contends that they should receive full pension pickup beginning 1/1/2001. Although various groups and unions received this benefit over time the WMA, in seeking parity should have received this benefit back in 1997.

The City contends that Union employees have received this benefit in lieu of a wage increase; not in addition to a wage increase. The proposal is not justified with the City's current financial situation.

Finding of Fact: I have carefully reviewed the positions of both parties and the City's financial information provided to me at the hearing in terms of making a recommendation concerning the PERS pickup. It is my finding that the WMA should be treated the same as the non-bargaining unit employees and the Local 74 bargaining unit employees in regards to this pension pickup. I find it reasonable for the City of Warren to give the WMA the pension pickup effective January 1, 2001.

Suggested Language: Article 35 - PERS

For the duration of this agreement, the employer shall pay, on behalf of each employee, the employee's share of the PERS pension contribution to the State of Ohio in accordance with their rules of the Public Employees Retirement System. This amount shall be equal to eight and one-half per cent (8-1/2%) of each employees gross wage.

Issue 10: Article 31: Life Insurance

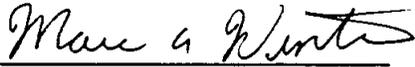
Union Position: The Union seeks a \$20,000.00 paid full life insurance policy.

Employers Position: The City rejects the Union's demand.

Discussion: The WMA has tried for years to negotiate for a \$20,000.00 paid in full life insurance policy and that a member be carried for a period of five (5) years after the effective date of their retirement.

The City feels that the current policy is sufficient.

Finding of Fact: Based upon the evidence presented and keeping within parity of the other unions, I find that the WMA's request to be unreasonable.



Marc A. Winters
Marc A. Winters, Fact-Finder

ARTICLE 34 - LAYOFF AND RECALL

1. Whenever it becomes necessary to layoff bargaining unit employees, because of lack of work, change in methods or other good cause shown the City will determine which occupation(s) must be reduced.
2. The following communications will be made by the City prior to any layoff affecting bargaining unit employee(s):
 - A. The City will meet with the Union and review the specific employee(s) that will be affected by the planned layoff.
 - B. The Union will receive copies of all layoff notices.
 - C. All affected employee(s) shall be given a minimum of fourteen (14) calendar days' advance written notice of their layoff, by certified mail at their last know address.
3. In the event employee(s) are laid off, they may, upon request, receive payment for earned but unused vacation benefits, for a one (1) year period as quickly as possible. The City agrees that such payment will not be later than thirty (30) days after the layoff.

Any laid-off employee who has earned but unused vacation benefits, which he/she wasn't compensated for per the above paragraph, shall receive the same vacation balance upon his return to work or be paid for such time thirteen (13) months after the layoff date.
4. When it is necessary to recall laid-off bargaining unit employees, employee(s) on layoff will be given fourteen (14) calendar days' notice of recall from the date on which the City sends the recall notice to the employee(s) by certified mail (to their last known address as shown on City records).
5. Unless otherwise provided for in this Agreement, employees shall not be eligible for benefits when on layoff status.