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STATE EMPLOYMENT
RELATIONS BOARD

FACTFINDING REPORT

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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

September 21, 2001

In the Matter of:

City of Seven Hills)
)
 and)
)
 AFSCME, Ohio Council 8, Local 3557)

SERB Case No. 00-MED-08-0848
Service and Maintenance Workers

APPEARANCES

For the City:

Mike Angelo, Labor Counsel

For the Union:

James A Ciocia, AFSCME Staff Representative
John P. Kelley, President, Local 3557
Fred Frost, Assistant Steward
Jim Rubes, Steward

Factfinder:

Nels E. Nelson

BACKGROUND

The dispute involves the City of Seven Hills and AFSCME, Ohio Council 8, Local 3557. The union represents approximately 20 service and maintenance employees. They are involved in vehicle operation and maintenance, snow removal, street and sewer maintenance, and other activities.

The parties are negotiating a contract to replace the one that expired on December 31, 2000. Negotiations began on November 29, 2000. When no agreement was reached the Factfinder was appointed. A hearing was held on August 16, 2001. An attempt was made to mediate the dispute but when no agreement was reached this report was prepared.

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

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

ISSUES

The parties submitted ten issues to the Factfinder. For each issue the Factfinder has briefly summarized the parties' positions and presented his analysis of the issue and his recommendation. Where appropriate, recommended contract language is included.

1) Article 10 - Discipline, Section 1- The current contract requires the city to give written notice of the reasons for discipline to all employees prior to imposing discipline.

City Position - The City proposes to permit notice to be given at the same time the disciplinary action is taken and to restrict the notice requirement to non-probationary employees. It argues that the current language limits its flexibility in removing or suspending an employee whose conduct warrants such action. The city indicates that the language that it has proposed is "mainstream."

Union Position - The Union opposes the city's demand. It points out that the city did not indicate what, if any, problems exist with the current language. The union states that the proposed language creates the potential for abuse by permitting the city to immediately deprive an employee of earning power even though the action might later be reversed by an arbitrator. The union stresses that the city's demand fails to satisfy the requirements to be heard prior to termination as set forth in Loudermill.

Analysis - The Factfinder recommends that the city's proposal be adopted with a change that insures that employees will not sacrifice their Loudermill rights. The language proposed by the city is similar to the language included in other collective bargaining agreements.

Recommendation - The Factfinder recommends the following contract

language:

When the City seeks as a penalty to suspend without pay or to discharge a non-probationary employee, it will give that employee a written notice either prior to or concurrent with the implementation of the disciplinary action stating the reasons(s) for the disciplinary action with a copy of such written notice forwarded to the local union steward.

Discipline shall not be implemented until either:

1. the matter is settled, or
2. the employee fails to file a grievance within the time frame provided by this procedure, or
3. the penalty is upheld by the arbitrator or a different penalty is determined by the arbitrator
4. However, where a suspension of greater than thirty (30) days or a termination is proposed such action may be taken immediately by the employer provided the requirements of Loudermill are first met.

2) Article 17A - Overtime/Premium Pay, Section 1 - The current contract

has no cap on the accumulation of compensatory time.

City Position - The City seeks a cap of 60 hours on comp time. It further wishes to pay all employees who have 60 hours of comp time for any additional overtime that is worked. The city contends that the cap is necessary to control unfunded liabilities and to insure that it has a sufficient number of employees on the job to perform the required tasks.

Union Position - The Union proposes to cap comp time at 120 hours and to pay employees for any additional overtime that is worked.

Analysis - The sole issue is the amount of hours that can be accumulated. The data provided by the city indicate the following caps:

<u>City</u>	<u>Maximum Hours</u>
Berea	80
Independence	80/240
Middleburg Heights	80
North Royalton	120
Strongsville	No Comp Time

This information suggests that a cap of 80 hours would be appropriate. This corresponds to two weeks of work. Most employees have accumulated far less than 80 hours and only three have more than 80 hours..

Recommendation - The Factfinder recommends the following language be added to Section 1:

Compensatory time may accrue to a maximum of eighty (80) hours, after which all overtime shall be paid at the appropriate rate. Employees who currently have accrued more than eighty (80) hours of compensatory time shall retain those hours but shall receive payment for all additional overtime until the accrued compensatory hours fall below the eighty-hour maximum.

3) Article 27 - Holidays, Section 1 - Number of Holidays - The current contract grants nine holidays and three personal days.

Union Position - The Union seeks to add Veteran's Day to the list of holidays. It offers the following comparisons:

<u>City</u>	<u>Holidays/Personal Days</u>
Bay Village	10/0

Garfield Heights	13/2
Independence	9/1
Middleburg Heights	10/2

The union indicates that since wages in the city are below the norm, its demand for an additional holiday ought to be granted.

City Position - The City opposes the union's demand. It claims that the comparable data indicates that employees have a sufficient number of holidays.

Analysis - The Factfinder believes that the union's demand must be denied. The number of holidays and personal days is not deficient and the comparable cities offered by the union offer an average of 11.5 holidays/personal days. While the union is correct that wages in the city are low compared to nearby cities, this issue is addressed below.

Recommendation - The Factfinder recommends the current contract language.

4) Article 27 - Holidays, Section 1 - Eligibility for Holiday Pay - The current contract includes no restrictions relating to eligibility for holiday pay.

City Position - The City proposes that employees be required to work the last regularly scheduled day before and after a holiday to be eligible for holiday pay. It further demands that employees who are sick on either of these days be required to provide a doctor's slip verifying the reason for the absence.

The city claims that its proposal is justified. It complains that some employees take the day before or after a holiday off to extend the holiday. The city indicates that this forces crews to work short-handed.

Union Position - The Union strongly opposes the city's demand. It contends that it is an attempt to intimidate and demean employees and is punitive because it requires all employees who use sick leave to get a note from a doctor. The union maintains that if an employee is inappropriately absent, the city ought to deal with it through the disciplinary procedure. It complains that the city's proposal would make it impossible for an employee to combine a vacation day with a holiday to get more days off.

Analysis - The Factfinder recognizes that the type of restrictions the city is seeking are commonplace in collective bargaining agreements. He believes, however, that its proposal is too restrictive in a number of ways and offers an alternative provision that meets some of the union's concerns.

Recommendation - The Factfinder recommends the following contract language be added to Section 1:

To be eligible for paid holidays, employees must work the regularly scheduled working day immediately preceding and following such holiday. In the event an employee is sick on either of the aforementioned days, the City must receive verification of illness from a licensed physician in order to qualify the employee for holiday pay. However, an employee shall be paid the holiday pay if the employee is:

1. Hospitalized or on an approved sick leave for a known serious illness;
2. On pre-approved personal leave;
3. On pre-approved bereavement leave; or
4. On pre-approved vacation.

5) Article 28 - Vacations, Section 1 - The current contract provides for the

following vacation schedule:

<u>Years of Service</u>	<u>Number of Weeks</u>
1 thru 4 years	2 weeks
5 thru 9 years	3 weeks
10 thru 14 years	4 weeks
15 and over	5 weeks

Union Position - The Union seeks to improve the vacation schedule. It proposes adding six weeks of vacation after 25 years. The union wishes to retain five weeks of vacation for employees with 15 to 25 years of service.

The union maintains that comparisons to similar cities support its position. It points out that Garfield Heights, North Royalton, and Middleburg Height offer six weeks of vacation after 20 years. The union notes that Maple Heights, Bedford, and Parma provide six weeks after 25 years. It acknowledges that Brook Park and Independence offer only five weeks of vacation.

City Position - The City opposes any improvement in vacations. It claims that the union's proposal will result in a significant number of employees receiving an additional week of vacation during the term of the agreement. The city asserts that manpower needs prevent it from granting the union's demand.

Analysis - The Factfinder recommends that the vacation schedule be increased to six weeks for employees who have completed 25 years of service. He recognizes the importance of time off to employees and that it may be particularly

significant to more senior employees. The Factfinder notes that the comparables offered by the city reveal that three of their five comparable cities offer six weeks of vacation.

Recommendation - The Factfinder recommends the following contract language:

<u>Years of Service</u>	<u>Number of Weeks</u>
1 thru 4 years	2 weeks
5 thru 9 years	3 weeks
10 thru 14 years	4 weeks
15 thru 25 years	5 weeks
26 and over	6 weeks

6) Article 33 - Wages and Shift Premium, Section 1- Wages - The current contract provides for wages for full-time employees ranging from \$13.77 to \$17.17. It also indicates that part-time wages range from \$9.30 to \$12.87.

Union Position - The Union demands a three-year agreement with 5% wage increases to be effective January 1 of 2001, 2002, and 2003. It indicates that its proposal is designed to rectify a wage shortfall compared to other communities. The union states:

The Seven Hills average is 4% lower than the average wages paid in the next lowest community, Maple Heights, and 26% lower than the average wages paid in the highest paying community, Independence. The average of all average wages paid in the other communities is \$18.21. This represents \$2.49 more per hour than the average paid in Seven Hills. Stated another way, service department employees in the other cities earn almost 16% more than their Seven Hills counterparts. (Union Statement, page 4.)

The union contends that the city is in sound financial condition. It points out that it finished fiscal year 1999 with an unencumbered general fund balance of more than \$2,000,000 or 58.3% of general fund expenditures for the year. The union notes that the State Auditor revealed that the city finished 2000 with a general fund balance of \$2,465,340.

The union maintains that the increased workload justifies its wage demand. It reports that over the past 20 years the service department has remained at 20 employees while more than 700 homes and 19 streets have been constructed. The union adds that the work of plowing streets has increased as the county has shifted the responsibility for a few roads to the city. It observes that employees have many additional duties such as maintaining soccer fields.

City Position - The City offers a 1 1/2 year contract with 2 1/2% wage increases effective January 1, 2001; July 1, 2001; January 1, 2002; and July 1, 2002, with the proviso that there will be no further wage increase until January 1, 2003. It also proposes to increase the wage for mechanics by an additional \$.50 per hour prior to the implementation of the uniform wage increase on January 1, 2001, and to increase the stipend for the working foreman to \$175 per month.

The city argues that its wage proposal recognizes that wages in the city are somewhat behind its counterparts. It stresses that its 5% per year wage proposal far exceeds what most other employees in the area have received. The city indicates that the additional increase for the mechanics acknowledges that their wage is disparately low.

Analysis - The Factfinder recommends that the city's wage offer be adopted. First, 5% per year represents a significantly higher wage increase than is being

negotiated in other jurisdictions. However, as the city recognizes, its wages are behind those in comparable cities. Given the city's strong financial condition, there appears to be no reason for employees to receive so much less than employees in nearby cities.

Second, the city's desire to phase in the increases is not unjustified. The 5% increase appears to be very substantial unless the strong justification for the increases is understood. Dividing the 5% increases in 2001 and 2002 into two increases of 2 1/2% fits with the rationale of making progress toward closing the wage gap with nearby communities but still leaves wage rates more than 10% higher when negotiations begin for a successor agreement.

Third, the rationale for the city's demand for an agreement that terminates on July 1, 2002, is clear. The city, like other employers, faces significant questions regarding the future cost of health insurance. If the city's collective bargaining agreements expire at the same time, it will be possible for the city to address the issue in a more reasonable fashion. A common expiration date will provide an opportunity for the city and the unions in the city to address the health insurance cost problem in a cooperative manner.

The extra increase for the mechanics and the increase in the supplement for the working foreman were not opposed by the union.

Recommendation - The Factfinder recommends the following contract language:

All wages shall be increased by 2.5% effective January 1, 2001; July 1, 2001; January 1, 2002; and July 1, 2002, with the proviso that there will be no further wage increase until January 1, 2003.

In addition to the above wage increase, the wage for mechanics shall be increased an additional \$.50 per hour prior to the general wage increase effective January 1, 2001.

During the months of November through March throughout the life of this Contract, the Working Foreman shall be paid an additional \$175 per month if he is assigned scheduling coordination responsibilities.

7) Article 33 - Wages and Shift Premium, New Section - Lead

Mechanic - The current contract has no provision for a lead mechanic.

City Position - The City indicates that it intends to create the position of lead mechanic prior to January 1, 2002, and proposes adding \$1.00 per hour to the rate of pay for mechanics prior to the granting of the general wage increase on January 1, 2002.

Union Position - The Union recognizes the right of the city to create new positions but is concerned about the selection of the person to fill the new position. It points out that the city currently has two mechanics that work together. The union claims that the city may show favoritism in the selection of a lead mechanic as it has in awarding merit wage increases to employees in city hall.

Analysis - The Factfinder recommends that the city's proposal be adopted. As the union recognized, the city has the right to establish the position of lead mechanic. The union did not challenge the city's offer of an additional \$1.00 per hour for the lead mechanic. If the union has concerns about the selection process for the position, it can address them in future negotiations.

Recommendation - The Factfinder recommends the following contract language:

The wage rate for lead mechanics shall be established by increases to the wage for mechanics by \$1.00 per hours before the implementation of the general wage increase scheduled for January 1, 2002.

8) Article 34 - Longevity, Section 1 - The current contract includes the

following longevity schedule:

After five (5) years	\$450.00 per year
After ten (10) years	\$625.00 per year
After fifteen (15) years	\$950.00 per year
After twenty years	\$1250 per year

City Position - The City proposes the following longevity schedule:

After five (5) years	\$500.00 per year
After ten (10) years	\$700.00 per year
After fifteen (15) years	\$1000.00 per year
After twenty years	\$1300 per year

It claims that its offer is reasonable given its other economic proposals.

Union Position - The Union proposes the following longevity schedule:

After five (5) years	\$525.00 per year
After ten (10) years	\$700.00 per year
After fifteen (15) years	\$1025.00 per year
After twenty years	\$1325 per year

The union views its proposal as part of its effort to address the serious compensation inequity.

Analysis - The Factfinder recommends that the union's proposal be accepted. It is a way to increase the total compensation of the more senior employees in the bargaining unit whose wages lag behind similar workers in other cities. In addition,

the union's proposal is supported by three of the five cities offered by the city as comparable communities.

Recommendation - The Factfinder recommends the following contract language:

After five (5) years	\$525.00 per year
After ten (10) years	\$700.00 per year
After fifteen (15) years	\$1025.00 per year
After twenty years	\$1325 per year

9) Article 38 - Duration - The current contract was for a period of three years.

City Position - The City proposes a contract of 1 1/2 years to expire on June 30, 2002. It seeks this duration in order to have all of the cities' agreements expire at the same time so that it can more effectively deal with the health insurance problem.

Union Position - The Union wishes a three-year agreement. It points out that previous agreements have always been for three years. The union indicates that it cannot imagine being back into negotiations before the ink is dry on this agreement.

Analysis - The Factfinder recommends that the city position be adopted. The rationale for this recommendation is set forth in the discussion of the wage issue.

Recommendation - The Factfinder recommends the following contract language:

The Contract shall become effective January 1, 2001, and remain in full force and effect until June 30, 2002, and, thereafter, from year to year unless at least one hundred and twenty (120) calendar days prior to said expiration date, or anniversary thereof, either party gives timely written notice to the other of an intent to bargain.

10) New Article - Drug Testing - The current contract has no drug and alcohol testing policy.

City Position - The City proposes a drug and alcohol testing provision. The proposal calls for random testing, discharge for refusal to take a test, confirmatory tests, re-testing by employees, treatment through an Employee Assistance Program, and other items included in most drug and alcohol testing programs. The city indicates that all but one or two employees are subject to testing under Department of Transportation regulations for employees with Commercial Drivers' Licenses. It claims that the union indicated that it wanted all employees to be treated the same.

Union Position - The Union opposes the city's drug and alcohol testing proposal. It states that employees who do not have CDL's do not engage in activities that are addressed by DOT regulations. The union indicates that if the city has reasonable suspicion that an employee is impaired, it can take appropriate action.

Analysis - The Factfinder recommends that the city's drug and alcohol testing proposal be adopted. Such programs are included in many collective bargaining agreements. The city's proposal is similar to many of the clauses included in other contracts. The union sought no specific changes in the program suggested by the city.

Recommendation - The Factfinder recommends the following contract language:

Section 1. All employees, irrespective of whether they possess a CDL, shall be subject to the random drug testing policies required under Department of Transportation regulations regarding employees required to have a Commercial Drivers License.

Section 2. Employees who may be drug or alcohol dependent are encouraged to voluntarily seek professional assistance through a reputable treatment

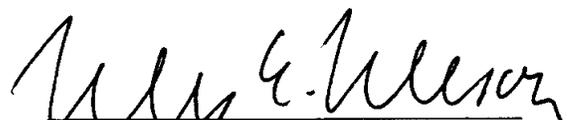
program. The District's Employee Assistance Program (EAP) can provide counseling and referral. All records of an employee seeking medical rehabilitation for drug and alcohol dependency, either through the EAP or otherwise, will be kept strictly confidential. Voluntary assistance should be sought before dependency affects job performance so as to endanger fellow employees, the public, or otherwise adversely impact on the employee's ability to perform his or her job duties.

Section 3. The EAP program does not supplant the normal discipline and grievance procedure. An employee subjected to disciplinary charges which include substance abuse on the job will be given access to the drug or alcohol screening results, the ability to have privately tested the blood or urine samples at an independent laboratory and the opportunity to rebut any allegations of substance abuse. Any charging letter issued to an employee which included allegations of substance abuse on the job shall list the basis upon which it was determined that there was reasonable cause to believe the employee was using drugs or was under the influence of drugs or alcohol at work.

Section 4. Any employee found to have positive screens for drugs and/or alcohol must be given medical clearance by a qualified physician acceptable to the District before returning to work.

Section 5. An employee who fails a drug or alcohol test for the second time during his employment with the District may be discharged immediately by the District, subject to just cause and the provisions of the grievance procedure.

Section 6. The District is not responsible for any legal obligations and costs for claims based on the Union's duty of fair representation.


Nels E. Nelson
Factfinder

September 21, 2001
Russell Township
Geauga County, Ohio