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STATE EMPLOYMENT
RELATIONS BOARD

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FACTFINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

October 9, 2001

In the Matter of:

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

0849
SERB Case No. 00-MED-08-0848
Clerical and Technical Workers

APPEARANCES

For the City:

Mike Angelo, Labor Counsel

For the Union:

James A Ciocia, AFSCME, Ohio Council 8, Staff Representative
Suzanne Lekan, Bargaining Committee
Jayne Anastasakis, Bargaining Committee
Rosemary Mellis, Bargaining Committee

Factfinder:

Nels E. Nelson

BACKGROUND

The dispute involves the City of Seven Hills and AFSCME, Ohio Council 8, Local 3557. The union represents approximately 17 clerical and technical employees of the city. The majority of the employees perform clerical work in offices in city hall. At least one employee is assigned to custodial duties.

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 September 24, 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 nine issues to the Factfinder. In order to expedite the resolution of the dispute, the parties agreed that the Factfinder could simply present his recommendations without summarizing the evidence presented or discussing the rationale for his recommendations. However, in some instances the Factfinder felt that it was necessary to offer a brief comment. 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 an arbitrator might later reverse the action. 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 17 - Temporary Transfers - The current contract provides that an employee assigned to another position for more than 30 days must receive the higher of his or her own rate or the rate of the other job.

Union Position - The union proposes that an employee transferred to another job get the higher rate immediately.

City Position - The city wishes to retain the current contract language.

Analysis - The Factfinder recommends that the current contract provision be retained. The city has a number of floaters who fill in for employees who are not at work. It does not appear necessary to change the current contract language.

Recommendation - The Factfinder recommends the current contract language.

3) Article 13, New Section - Requests for Excused Time-Off - The current contract has no provision regarding the granting of requests for excused time-off.

Analysis - The Factfinder discussed alternative provisions dealing with the approval of requests for time off. He believes that the recommended language recognizes the rights of senior employees and protects the city's legitimate interests.

Recommendation - The Factfinder recommends the following contract language:

Requests for excused time off shall be submitted by April 15 of each calendar year. Timely requests shall be granted on the basis of seniority. Any request submitted after April 15 shall be granted at the sole discretion of the Department Head, giving due consideration to operational needs. The employer reserves the right to cancel approved time off in event of an emergency.

4) Article 23, Section 3 - Sick Leave Buy-Out - The current contract provides that at retirement employees with ten or more years of service are paid 50% of their accrued sick leave up to a maximum of 180 days.

Union Position - The union demands three changes. First, it wants to extend the buy-out to employees who resign or die. Second, the union wishes to increase

the pay-out to 50% for employees with five to eight years of service, 75% for employees with eight to ten years of service, and 100% for employees with more than ten years of service. Third, it seeks to remove the limit of 180 days of pay for sick leave.

City Position - The city wishes to retain the current contract language.

Analysis - The Factfinder must deny the union's demand. First, he believes that the clerical unit should be treated the same as employees in the service and maintenance unit. The unit properly expects to receive the advantages of the other contract but it cannot expect to add significant items above and beyond the agreement that the other unit reached with the city. Second, the current buy-out provision compares favorably to similar provisions in the area. Thus, there is no basis to grant the union's demand.

Recommendation - The Factfinder recommends the current contract language.

5) Article 30 - 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 off the day before or after a holiday 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.

6) Article 32 - Uniforms, Section 1 - The current contract requires the city to provide uniforms for full-time custodians, to replace any damaged uniforms, and to clean any dirty uniforms.

Union - The union demands an annual \$300 clothing and maintenance allowance.

City - The city offers a \$200 annual allowance.

Analysis - The Factfinder recommends that the city's offer be accepted. If the amount of the allowance proves to be inadequate, the issue can be raised in subsequent negotiations.

Recommendation - The Factfinder recommends the following contract language:

Upon presentation of receipts one full-time custodian shall be entitled to an annual clothing and maintenance allowance not to exceed \$200.

7) Article 35 - Labor-Management Committee, New Section - The current contract provides for a labor-management committee to address subjects that are not appropriate for formal negotiations.

Analysis - The city has awarded merit salary increases to employees who are not at the top of their salary ranges. The union complained about the distribution of the increases in the past. In particular, it objected to the lack a formal evaluation system. While it was not possible for the parties to negotiate such a system during the factfinding process, this is a topic that would appear to fall under the parties Labor-Management Committee.

Recommendation - The Factfinder recommends the following contract

language:

The Labor-Management Committee, by consensus, shall develop an evaluation form and a process for evaluating employees.

8) Article 33 - Wages - The current contract provides for two wage ranges.

Approximately 15 positions fall in range one which is from \$8.36 to \$12.24. Two positions are in range two which is from \$10.80 to \$13.90.

Union Position - The union accepts the city's offer of 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. In addition, it proposes that the two wage ranges be consolidated and employees be granted equity wage adjustments.

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.

Analysis - The Factfinder recommends that the city's wage offer be adopted. The 5% per year increases represent a significantly higher wage increase than is being negotiated in other jurisdictions. However, the city's wages appear to be 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.

The union's demand that the two wage ranges be combined and that employees be granted equity increases must be rejected. While a number of employees are at the top of range one and are not eligible for merit increases, it is not unusual for long term

employees who reach the top of their range to receive only the negotiated wage increases plus longevity payments reflecting their years of service. The Factfinder suggests that the city and the union consider adopting a conventional step salary schedule and placing jobs on that schedule.

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.

9) Article 34 - Longevity, Section 1 - The current contract includes the following longevity schedule:

<u>Total Cumulative Hours</u>	<u>Longevity Amount</u>
10,400 to 20,799	\$350 each year
20,800 to 31,199	\$650 each year
31,200 or more	\$950 each year

Union Position - The Union proposes increasing the longevity as follows:

<u>Total Cumulative Hours</u>	<u>Longevity Amount</u>
10,400 to 20,799	\$500 each year
20,800 to 31,199	\$800 each year
31,200 or more	\$1050 each year

City Position - The City proposes the following longevity schedule:

<u>Total Cumulative Hours</u>	<u>Longevity Amount</u>
10,400 to 20,799	\$375 each year
20,800 to 31,199	\$650 each year
31,200 or more	\$950 each year

Analysis - The Factfinder recommends that the service unit's longevity schedule be adopted. It was recommended by the Factfinder and accepted by both

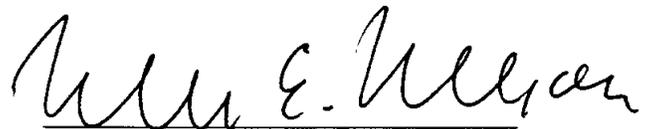
parties. There is no reason for the clerical employees in city hall to have different longevity payments. Such an arrangement would be very unusual.

Recommendation - The Factfinder recommends the following contract language:

<u>Total Cumulative Hours</u>	<u>Longevity Amount</u>
10,400 to 20,799	\$525 each year
20,800 to 31,199	\$700 each year
31,200 to 41,599	\$1025 each year
41,600 or more	\$1325 each year

10) Tentative Agreements - The parties reached a number of tentative agreements during negotiation and the factfinding process. They agree that the tentative agreements should be incorporated in the new contract.

Recommendation - The Factfinder recommends that the tentative agreements reached by the parties be incorporated in the contract.



Nels E. Nelson
Factfinder

October 9, 2001
Russell Township
Geauga County, Ohio