

2001 MAR -1 A 10:39

FACT-FINDING OF FACT FINDER JACK E. MCCORMICK
IN THE MATTER OF CITY OF NEW LEXINGTON, OHIO
AND NEW LEXINGTON CITY EMPLOYEES, LOCAL #2463
AND OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

00-MED-10-1046

FEBRUARY 28, 2001

For the Union:
Tamara D. Carsey
36 South Plains Road
The Plains, Ohio 45780-1348
Telephone: (740)797-9708
Fax: (740)797-9712
1-800-361-6710

For the Employer:
Kenneth L. Edsal
CLEMANS, NELSON & ASSOCIATES, INC.
5100 Parkcenter Avenue, Suite 120
Dublin, Ohio 43017-7563
Telephone: (614)923-7700

On February 13, 2001, a fact-finding was held in the Mayor's office of the New Lexington City Building, 125 South Main Street, New Lexington, Ohio. Present at the hearing were the following:

Tamara D. Carsey, AFSCME Ohio Council 8

Terry Moore, Local 2463

Mark Cooper, Local 2463

Scott A. Bryant, Local 2463, President

Chuck Micks, Local 2463

Delinda Lacey, Finance Director, City of New Lexington

Kenneth L. Edsal, Counsel for New Lexington

Delmar Davison, New Lexington, Ohio City Council

Amanda Webb, Ohio University Student

By agreement of the parties Ms. Amanda Webb was allowed to sit as a member of the public for purposes of a scholastic assignment. Ms. Webb was cautioned by the fact-finder that any matters discussed in the fact-finding were not to be made public and that she was only there in an observer status.

The parties were made fully aware of the statutory requirements of the Collective Bargaining Law and, were offered mediation, which they declined. The fact-finding began at approximately 10:00 a.m. and was adjourned for further proceedings at approximately 2:10 p.m.

The parties have mutually agreed that there are three issues to be decided at the fact-finding and that all other issues outstanding between the parties have been mediated and signed by the parties and by mutual agreement those issues are not set forth

in the fact-finding herein. Prior to the fact-finding, the parties have agreed that the successor agreement which is the subject of this fact-finding shall have a three-year duration, which leaves only two issues for fact-finding, those being Article XIV, Vacation, and Article XVI, Wages.

BACKGROUND

This is a successor agreement, the parties have a history of agreements dating back to 1981. The predecessor agreement expired on December 23, 2000.

The bargaining unit consists of fifteen employees of the Water and Streets Department, including two salaried employees.

The City of New Lexington has a population of approximately 5,117 people and is located in southeastern Ohio, Perry County. Previously, in predecessor agreements, there has been at least one job action and a fact-finding. In this agreement the parties have engaged in numerous bargaining sessions since mid-December, 2000, and one mediation session which resulted in twelve issues being successfully mediated.

DISCUSSION

It must be noted by the fact finder that throughout the bargaining sessions dating from mid-December to the first fact-finding hearing on February 13, 2001, the Employer has been unable

to provide the Union, nor this fact-finder with any figures on availability of funds. This is a situation that the fact-finder in his seventeen year history of fact-finding has never faced before. The city states that the reason for this was that the full-time finance director left in August of 2000, and subsequently a part-time finance director was hired, and no full-time employee was hired until October of last year. The auditor of the State of Ohio has given the city an extension until March 31, 2001 to submit its statutorily required budget.

A city's duty to reconcile its finances and submit a budget to the State of Ohio, as well as the taxpayers, is paramount. The City has an affirmative duty to take the necessary measures to fulfill that statutory requirement. Failure to fulfill that requirement violates both the spirit, and the letter of the Collective Bargaining Law, no matter the reason for that failure. A bargaining unit nor a fact-finder cannot intelligently, nor prudently, make decisions without this information, neither can a city council or any taxpayer. The city could have, and should have, hired a full-time finance officer immediately or, in the absence of that, hired a private accounting firm to reconcile their books before the end of the calendar year 2000; after all this is not a huge budget. Their failure to do so left their bargaining representative, as well as the Union's, completely in the dark at the expiration of this last contract. Certainly the Union played no part in this nonfeasance, and accordingly, it is the fact-finder's finding that

any and all provisions contained in the successor contract be retroactive to December 23, 2000.

VACATION

The Union proposes that the vacation allowances of bargaining unit members be increased so that employees with five years, but less than ten years, earn a one hundred and twenty hours (120); those between ten years and less than fifteen years, one hundred and sixty hours (160); those between fifteen years, but less than twenty years, two hundred hours (200); those between twenty years, but less than twenty-five years, two hundred forty hours (240); those with twenty-five years, but less than thirty years, two hundred eighty hours (280); and those with thirty years or more to three hundred and twenty hours (320).

The Employer argues in favor of retaining the current schedule which would allow employees with five years, but less than fifteen years, one hundred and twenty hours (120); fifteen years, but less than twenty years, one hundred and sixty hours (160); and with twenty or more years, two hundred hours (200).

The Union argues that this brings their vacation allowance more in line with other employees, specifically the New Lexington Police Department.

The Employer argues that this faster rate of accumulation for employees with five years or more coupled with the holiday, sick leave, and personal days already granted to the employees, would

result in a diminution in the work force which the Employer cannot afford.

The fact-finder finds merit in both parties argument in this matter, as well as the assertion that such an accumulation would bring them into line with comparable city employees.

FINDING

The fact-finder recommends that the new agreement contain the following new language to Article XV, section 1.

Years of Service	Vacation Allowance
one (1) yr. or more but less than five (5) yrs.	80
five (5) yrs. but less than ten (10) yrs.	120
ten (10) yrs. but less than fifteen (15) yrs.	160
fifteen (15) yrs. but less than twenty (20) yrs.	200
twenty (20) yrs. or more	240

The Union requests change in section 4 of Article XV, which allow employees to accrue an unlimited amount of vacation hours. In making their presentation of this matter, they admitted that no one else to their knowledge in Perry County has such an allowance.

The Employer argues that to allow an employee to accumulate more than five weeks of vacation could prove disastrous to the Employer when trying to ensure full-time funding for this unit.

According to the Union, the New Lexington Police Department is allowed to accumulate two hundred (200) hours.

FINDING

Section 5 of Article XV of the agreement should read:

Employees may accrue unused vacation up to two hundred (200) hours for purposes of this Article.

During the discussion on vacation, the parties agreed that the Union's proposed language to section 5, Article XV, Vacation, is nothing more than a codification of existing practices and therefore the parties have no objection to its being included in the new agreement.

FUNDS AVAILABILITY

At the outset of the hearing the fact-finder cautioned the parties that any party who asserts an affirmative position must bear the burden of proof on that position. In spite of that caution the City of New Lexington alleged that it simply had no funds available beyond that offered in its wage increase to pay these employees. Thereafter they presented absolutely no evidence whatsoever to support that position. When asked how they could propose any raise without having any financial data, there was a shrug of the shoulders at which time a councilman said, "I just threw those numbers out to have something to offer, hoping we could

pay for them." This is a rather odd way to engage in negotiations and borders on a failure to bargain in good faith.

Towards the end of the first session of fact-finding, a member of the Union provided the fact-finder with the first definitive finding he had seen all day concerning the City of New Lexington. This data, although current only through July of 2000, was exactly the type of information that should have been provided by the Employer. Why the Union was able to provide such information and not the City is a curiosity.

In this document there appears to be six line items that may be relevant to this bargaining unit. They are Water, Water Reserve, Water B & I, Sewer, Sewer Bond, and Street. On July 1, 2000, the City of New Lexington had a cash balance of \$925,192 of which \$554,743, or sixty percent, came from these categories. In addition, as of that date the City had \$420,000 in certificates of deposit, of which \$262,000, or 62%, came from the Water, Water B & I, and Sewer Bond. In other words, out of the \$1,345,192 in cash balance, the City of New Lexington had \$712,430 or over 50% of that cash balance coming from these departments. Additionally, the number one revenue producer, other than the general tax revenues, is the Water Department. The number three revenue producer is the Sewer Department. This is consistent throughout the six month period of January through June of 2000. In fact, for the six month period of January to June, the Water item alone realized revenues of \$4,371 in excess of its expenditures. Also curious is the fact that the Water Department has had throughout this six month period

a \$170,000 certificate of deposit. The question, of course, is where is the interest from those certificates of deposits being credited? It is possible that they are in the revenue portions of the Water Department, but it is also possible they are in the general revenue fund. Assuming that these certificates of deposit are earning a minimum of 5.5 percent per annum, that means that the Water Department's certificate of deposit is earning the City \$9,350 annually. This is interest that, even if the CDs are pledged as collateral, is available to the City. There is, of course, additional interest from the \$50,000 Water B & I certificate of deposit, and a \$42,000 Sewer Bond certificate of deposit to be realized. It appears to this fact-finder that just the interest on the certificates of deposits from these departments would easily fund a modest pay increase.

Contrary to the Employer's position, the City's financial position has remained relatively stable for this six month period. Its beginning cash balance in January of 2000 was \$1,345,175.10. Its cash balance on July 1, 2000, was \$1,345,191.63, almost the exact same amount. Indeed a cursory review of these documents indicate to this fact-finder that not only is it not true that the general revenue is subsidizing the Water Department, but quite the opposite, the Water and Street Departments appear to be subsidizing the general revenue. Now for a review of the latest financial data.

On February 26, 27, and 28, 2001, the City submitted additional financial data concerning their current fiscal position. The City's annual budget ending December 31, 2000, contains twenty-

five separate funds, including the Water Plant, Water Maintenance, Water Administration, Water Reserve, Waterworks Bond and Interest, Sewer and Streets. Most interesting is the fact that two of those categories, Water Funds and Water Reserve Revenue (both available for spending) had revenue exceeding expenditures in the amount of \$83,357 or 53.6% of the cash on hand. Indeed, the largest single categories of underspending occurred in the Water Department and water related funds. At first blush this indicates that the cash surpluses they are enjoying largely come from the Water Department and related funds. The City did find it necessary to overspend in such non-essential funds such as the swimming pool (\$12,624) and Soccer in the amount of \$1,174. At the same period of time they budgeted \$20,000 for sewer improvements and spent none of it.

As it relates to fund balances ending December 31, 2000, the fact-finder notes that the total of cash and certificates of deposit available are now \$1,227,862.44. This is a slight decrease from the June 30th balance of \$1,345,000. However, once again, a vast majority of the cash balance can be contributed to the water related departments. The Water Department has a balance of \$360,000, sewer \$136,000, street \$58,000, and all the Water Reserve Bond and Interest and Sewer Bond funds have healthy balances also. It is also noted that the certificates of deposit remain stable at \$420,000 (\$100,000 being the State of Ohio required minimum). Although most of the certificates of deposit are pledged as collateral, apparently their interest earnings are being returned

to the City coffers, as no interest increases are noted on each of the certificates of deposit.

It is noted that the City does have considerable debt, but it appears, at least through December 31, 2000, they are servicing that debt while continuing to maintain a stable cash balance. It has made provision within its budget for the payment of the Fire Department and EMS, as well as the cemetery, should proposed levies fail. It is noted that the ending cash balances (without CDs) has diminished considerably in the last six months from \$925,000 to \$807,800. However, the Water Department and Sewer Department continue to operate at a profit, thus, in effect, subsidizing the remainder of annual expenditures. Using \$3.0 million as a FY 2001 budget the City appears to have on hand 41% in that in cash reserve. None of this takes into account the anticipated reduction in Workers' Compensation premiums which all municipalities will enjoy this year, as well as a one year reduction in PERS contributions. Within this budget the City should be earning at least \$23,100 interest on its certificates of deposit, of which a majority comes from the water and related departments. Inasmuch as the Water Department is constantly running at a profit, there is no reason why the interest, at least on its CD, should not be used for wage increases.

The City budgeted \$2.834 million for FY 2000, but spent \$3.09 million, or \$262,065 in overspending.

Accordingly, after a thorough and searching review of all the materials provided by the parties in this matter and a consideration of their presentation, the fact-finder makes the following finding:

THE CITY OF NEW LEXINGTON, OHIO HAS AVAILABLE, SUFFICIENT AND ADEQUATE FUNDS TO SUPPORT THE ECONOMIC RECOMMENDATIONS MADE HEREIN.

WAGES

The parties have vastly different proposals for the wage increases for the bargaining unit employees. The Union proposes fifteen percent (15%) wage increases for each of the three years of the new agreement. The Employer proposes twenty-cents an hour (\$.20) increases the first year, followed by fifteen-cents an hour (\$.15), and ten-cents an hours (\$.10) the following two years.

The fact-finder finds as a matter of fact that neither of these proposals are realistic or justified. The fact-finder read each and every supporting document, including comparables submitted by the parties regarding these issues. Included in this review was a consideration that the latest Consumer Price Index did increase from 3% to 3.2% in the year 2000. The parties' submissions indicate that these employees are being paid at a mid-range to low mid-range to their counterparts in other counties. In addition, general collective bargaining agreements throughout the state have been running at an average of two to four percent (2% to 4%) per year in the recent past. Accordingly, neither parties' proposals are

supported by any extrinsic facts. If this were not a successor agreement the Union's request for a 52.8% increase over three years might be seen as a "catch-up". However, this is a successor agreement of a bargaining unit that has been in contractu for twenty years. Therefore, if predecessor agreements did not adequately compensate the bargaining unit members, that lies entirely at the feet of the bargaining unit. On the other hand, the Employer's proposal to provide raises totalling \$.45 over three years, while it has some historical precedent, would, in effect, result in a net pay cut for these bargaining unit members.

Accordingly, the fact-finder finds as a matter of fact that there is merit to an increase in pay for the bargaining unit members greater than that offered by the Employer, but less than that proposed by the Union. The following recommendation will result in the bargaining unit employees realizing a wage increase of 9.27% over three years.

FINDING

Section 1, Article XVI of the agreement should read as follows:

Effective December 23, 2000, all employees in the bargaining unit shall receive a three and one-half percent (3.5%) wage increase;

Effective December 23, 2001, all employees in the bargaining unit shall receive a three percent (3.0%) wage increase;

Effective December 23, 2002, all employees in the bargaining unit shall receive a two and one-half percent (2.5%) wage increase.

Furthermore, the last sentence in the fifth paragraph of section 1, which reads as follows:

The water, waste water, and CDL employees should receive no further wage enhancement by virtue of their licenses.

should be deleted.

The Union points out that unlike many other bargaining units there are no step increases provided to the current pay scale. Further, the Union indicates that it has in the past requested such step increases, but they have been rejected by the Employer.

The fact-finder believes that step increases are a method of protecting employees from the effects of inflation. Not only that, they contribute significantly to the retention ability of the Employer.

FINDING

The fact-finder finds there is sufficient justification to adopt the Union proposal for the changes in section 3, Article XVI of the agreement titled "SUPPLEMENT PAY". Furthermore, that the Union's proposal language for section 2, Article XVI; section 4 and section 5 of Article XVI, be adopted.

The Union proposes that a new section 6, Article XV, that employees that possess certain certifications receive an incentive. This fact-finder believes that employee incentives are important for both the employee and the Employer to ensure qualify well-trained individuals.

FINDING

Section 6, Article XV of the agreement shall read as follows:

CERTIFICATIONS/LICENSE INCENTIVE. For each employee required to possess a valid Ohio EPA water, waste water, distribution, or collection certification shall be paid an incentive as defined below. Certifications/License Incentives are paid for the highest certification of license held:

Class I	\$.50 per hr.
Class II	\$.75 per hr.
Class III	\$1.00 per hr.

The Union proposes that laborers who in effect become equipment operators be reclassified as EQUIPMENT OPERATOR/ MAINTENANCE MAN after six months of service and successful qualifications of the CDL requirements.

The fact-finder believes this to be supported by the facts and hereby recommends that the Union's language for section 7, Article XV, be adopted.

The Union has pointed out that there is a clerk working in the Water Sewer Office who receives an hourly salary of seven dollars and fifty cents (\$7.50) while her counterparts are receiving eight dollars and ninety cents an hour (\$8.90). For purposes of pay

equity the Union proposes that this clerk's hourly salary be raised by seventy-five cents an hour (\$.75).

The fact-finder finds that there are sufficient facts to adopt this increase and therefore recommends that the language of the Union at section 8, Article XV, be adopted.



Jack E. McCormick
Fact-Finder

February 28, 2001
Columbus, Ohio