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STATE EMPLOYMENT
RELATIONS BOARD
2001 MAY 14 A 10: 17

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May 3, 2001

In the Matter of:)
)
The City of Dover)
)
)
and) 00-MED-12-1364
)
AFSCME Local 2550:)
Service and Utility Employees)
)

APPEARANCES

For Local 2550:

Dave Kiser, Master Tech II
Tom Harmon, Motor Equipment Operator
Glenn Porter, Waste Water Operator III
Matthew Specht, Truck Driver
Mary Jane Stemple, Utility Billing Clerk
Ed Thomas, Operating Engineer
Paul Tiratto, Waste Water Crew Leader
Paul Truckley, Motor Equipment Operator
Gregory Weigand, Light Plant Maintenance
Fred Hartzel, AFSCME Staff Representative

For the City:

Richard Homrighausen, Mayor
Dave Douglas, Service Director
Mary Fox, Auditor
Zachary Space, Law Director

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the members of the Service and Utility Workers represented by AFSCME Local 2550 and the City of Dover. Prior to the formal Fact Finding Hearing there were numerous negotiating sessions between the parties; however, they were unable to come to an agreement and five (5) issues remain unresolved. These issues are 1) wages, 2) equity increases for certain classifications, 3) payment of a signing bonus, 4) custodian wages, and 5) the composition of the bargaining unit. There was no mediation session conducted prior to the hearing because the parties indicated that they had thoroughly discussed these issues and their positions were firm. The Fact Finding Hearing was conducted at the Dover City Hall on April 18, 2001. The hearing was convened at approximately 10:15 AM and adjourned at 1:15 PM.

The Fact Finder wishes to state that he appreciates the courtesy with which he was treated. Additionally, both parties conducted the Hearing with the greatest professionalism, and the conduct of the parties toward the Fact Finder and each other was exemplary.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria which are set forth in Rule 4117-9-05, are:

- (1) Past collectively bargained agreements, if any.
- (2) 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.
- (3) 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 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 Report is attached and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

Introduction:

The disagreement between the parties is mainly “economic;” that is, money is the root of the problem. The main areas of disagreement are the payment of equity bonuses for contested job classifications and the size of the general wage increase. The City operates its own power plant and, therefore, there are a number of skilled job classifications for employees who work either in the power plant or in the meter department. Many of these workers believe that they are underpaid and deserve an equity adjustment. There are three reasons for this belief: 1) some employees will receive adjustments in the prospective contract, 2) the power plant and associated services are making a profit, and 3) some workers in the private sector make higher wages than the Dover employees. As a result, the workers feel that the City can and should meet their demands.

The City argued that it pays a competitive wage, and it believes that the employees are well compensated for the work they perform. In addition, the City pointed out that a careful examination of the pay rates for jobs associated with both the power and wastewater operations had identified a number of positions that needed an adjustment, and that the City and the Union had negotiated these changes. Both sides agree that the proposed contract contains equity pay adjustments for some job titles. Consequently, the City contends that the negotiations between the parties took care of any problems with the pay scale. Moreover, it is the City’s belief that the remaining positions, the ones in contention, either deserve no equity adjustment or a lower adjustment than the Union demands.

It must be pointed out at this point that the City believes that all of its employees are well trained, highly motivated, and excellent workers. The City is not making an argument that there is any problem with the work force or that any the workers are over paid, rather the argument is that the classifications in question are paid fairly. Therefore, at its heart this is a simple economic dispute. The workers believe that they should be paid more, and the employer believes that the wages and benefits paid are reasonable for the work performed.

Issue: Article V: Composition of the Bargaining Unit

Union Position: The Union argues that the bargaining unit should remain intact. That is, the Union believes that the job classification, “Wastewater Secretary,” should remain in the unit.

City Position: The City wants to separate the “Wastewater Secretary” from the unit.

Discussion: Some background must be given so that the issue can be fully discussed. The current occupant of the position has been with the City for a number of years and has always been a union member. In a previous

negotiation the parties agreed to leave the position in the bargaining unit. However, the current Wastewater Secretary is nearing retirement age, and the City believes that the position should be separated from the bargaining unit when she retires. Consequently, the City is demanding that the wastewater secretary position be removed from the unit. The City argues that the language in Article 5.04 that enumerates confidential employees covers the position. That is, the City believes that legally the position should not be in the unit. The City argues that it agreed to leave the position in the bargaining unit only as a consideration to the current secretary. Now that the incumbent is nearing retirement, the City wants to rectify what it perceives as a problem.

The Union, of course, disagrees with this contention. The Union argued that the secretary is not a confidential employee within the technical definition of that term. In addition, the Union believes that it cannot simply negotiate a position out of the bargaining unit. If the unit is to change, then the Union believes that the procedures outlined in ORC4117 covering unit determination must be followed. Therefore, the Union strongly objects to the City's logic in this case and believes that the Wastewater Secretary should remain in the unit.

According to 4117.01(K) "confidential employee" means any employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer. In more prosaic terms a confidential employee is a person who has insider information about the employer's positions, etc., which would damage the employer during negotiations if that information were proffered to the Union.

The City testified that the wastewater supervisor occasionally had to keep some information from the secretary. However, there was no testimony that this caused any undue hardship on the supervisor. Other than that assertion, the City presented little testimony on the issue.

The testimony on this issue does not imply that the wastewater secretary is a confidential employee within the meaning of the language of ORC 4117. While the Fact Finder believes that the supervisor does occasionally keep information from his secretary about personnel issues that does not make the secretary a confidential employee. Moreover, it is not unusual for a person to sometimes type memos, etc., themselves rather than have the work done by a secretary. There are many reasons for such behavior, and the simple fact that a supervisor uses a word processor cannot lead to a conclusion that his/her secretary is a confidential employee.

Finding of Fact: Management did not prove that the wastewater secretary is a confidential employee according to the definition of that term in ORC 4117.01(K)

Suggested Language: Current Language.

Issue: Signing Bonus

Union Position: The Union demands a signing bonus of \$500.00 per member payable when the contract is ratified.

City Position: The City is unwilling to pay a signing bonus.

Discussion: The Union demand is predicated on an offer made by the City prior to the start of negotiations. The City offered an *Early Signing Bonus* (emphasis added) of \$400.00 as an inducement to the union membership to reach an agreement. The current impasse is, in the City's opinion, proof that the parties could not agree. Therefore, the City believes that its offer of an early signing bonus is no longer on the table. The Union, on the other hand, contends that the City made an offer and that the offer is still on the table. The membership wants a larger bonus than the original offer and has taken the issue to Fact Finding.

Signing bonuses are a standard way for management to negotiate increases in employee compensation without increasing the base rate. However, signing bonuses are not usually negotiated into a contract if the parties are willing and able to increase the base rate to a reasonable level. Of course, what constitutes a reasonable raise is an open question; and in this case, the parties have not come agreement on wages. In this instance, however, the City is willing to negotiate an across the board wage increase with the Union. Furthermore, the City believes that its wage offer is fair. Consequently, the City contends that the bonus offer was strictly an incentive offered to the workforce as a way to bring negotiations to a speedy conclusion.

Negotiations are costly, and the City's incentive offer was based on a type of cost/benefit calculation. When the benefits of an early end to negotiations disappeared, then the bonus constituted a cost with no offsetting benefit; and the offer was withdrawn. The Union, on the other hand, believes that its members deserve whatever wage gains they achieve during these negotiations and sees the bonus as payment for a job well done.

The Fact Finder understands management's position on this issue. It is clear that the bonus offer was intended to be an incentive offered to the union as a way to expedite agreement. The City hoped to reduce the implicit (time) cost and the explicit costs associated with negotiations. This is a reasonable, albeit somewhat unusual, position.

The Fact Finder also notes that the parties engaged in prolonged negotiations over the size of the general wage increase, and neither party indicated that the size of the wage increase was tied to signing bonus. In other words, the bonus was not a replacement for all or part of the general wage increase. Given the fact that the City did not attempt to lower its wage offer predicated on the Union accepting the bonus, the Fact Finder believes that the bonus payment was intended to be just that, a bonus. The fact that it was withdrawn is not unusual; offers are often withdrawn or modified.

The Union did not present a compelling reason for the Fact Finder to suggest inclusion of the bonus into the contract. Rather the Union simply believes that its membership is deserving of increased wages because they do a good job. While both sides admit the workers do a good job, the City believes that its bonus offer was rendered moot by the passage of time. Given the facts surrounding this situation, especially the fact that the City's general wage offer was in no way tied to the bonus payment, the Fact Finder does not believe that the City's position is unreasonable or that the Union proved the need for a bonus payment.

Suggested Language: None

Issue: Article V: Custodian Wages

Union Position: The demand is for a change of date from April 1, 1995 to April 1, 2001 in the current agreement. This change will effectively grandfather all current bargaining unit members who might bid on the custodian's position.

City Position: The City refuses to change the contested language.

Discussion: The basis for the Union's demand is that the parties agreed in 1995 to include the contested language into the contract to insure that the Utility Billing Clerks would be paid more than the custodian after the current incumbent in the custodian position retired. This change was put into the contract at the Union's behest. At the present time, the custodian is nearing retirement age and the language will become effective. The Union believes that some of its members who are currently working in other positions might possibly bid on the custodian's job if the wage was high enough. That is, some current union member might want the custodian's job at the current rate. The union argued that one of its members who is performing a job that he/she finds onerous might want the custodian's position, but that employee might not bid because he/she would have to take a pay cut.

The City understands the Union's argument(s), but does not desire to change the current language. The City pointed out that the current language is in the contract because the Union demanded its inclusion. The City also contends that the custodian's position wage is reasonable for the job performed. The City doesn't believe that it should overpay for the job because a current employee might want to bid for the position. The City believes that it can fill the job with no trouble; and if a current union member wants the position, then he/she can bid for it. If the wage discourages someone from bidding, the City believes that is an individual choice. To reiterate; the City does not believe that it should overpay for the job performed.

This is a situation where the Union failed to prove its point. There is some possibility that there might be job bids for the position, however, there is

also some possibility that there will be no bids regardless of whether or not a current union member has expressed interest in the position. Many things change over time, and what is intended often does not eventuate. In addition, there was no testimony that the position is not adequately compensated for the duties performed. The City believes that it can fill the position when a vacancy occurs and does not want to pay more than the Utility Billing Clerks' wage. Given all the facts and considering that the language is in the contract because the Union demanded its inclusion, the Fact Finder believes that the Union did not prove that there is a compelling reason to delete the language from the contract.

Finding of Fact: The Union did not prove that the language should be deleted from the contract.

Suggested Language: None.

Issue: Article V: Wages (Equity Increases)

Union Position: The Union demanded that certain classifications, enumerated below, have an equity adjustment added to the base rate.

1. Operating Engineer be paid the same as the Lineworker Journeyman starting April 2, 2001.
2. Electric Division:

	April 1, 2001	April 1, 2002	April 1, 2003
A. Line Crew Leader	\$1.00 per hr.	\$0.75 per hr.	\$0.50 per hr.
B. Lineworker Journ.	\$1.00 per hr.	\$0.75 per hr.	\$0.50 per hr.
C. Meter Crew Leader	\$1.00 per hr.	\$0.75 per hr.	\$0.50 per hr.
D. Meter Tech Journ.	\$1.00 per hr.	\$0.75 per hr.	\$0.50 per hr.
E. Meter Tech III	\$1.00 per hr.	\$0.75 per hr.	\$0.50 per hr.
F. Meter Tech II	\$1.00 per hr.	\$0.75 per hr.	\$0.50 per hr.

City Position: The City is unwilling to raise the pay of the Operating Engineer, and the new positions and/or new titles of Meter Technician Apprentice III and Meter Technician Apprentice II. Additionally, the City has offered equity increases for the following classifications.

Electric Division:	April 1, 2001	April 1, 2002
A. Line Crew Leader	\$1.00 per hr.	\$0.75 per hr.
B. Lineworker Journ.	\$0.60 per hr.	\$0.50 per hr.
C. Meter Crew Leader	\$1.00 per hr.	\$0.75 per hr.
D. Meter Tech. Journ.	\$1.00 per hr.	\$0.50 per hr.

Discussion: It must be noted at this point that the parties have agreed on equity increases for the job classifications of Cemetery Crew Leader, Traffic Control Maintenance Worker, Inventory Control Coordinator, Inventory Control Assistant, Water Meter Crew Leader, Senior Lab Technician, and Wastewater Secretary.

The Union presented testimony by Ed Thomas, a licensed operating engineer. He testified the engineer's position historically had been paid the same rate as the Journeyman Lineman, and the engineers believe that they should be paid at that level. In addition, he listed the job requirements for the position and stated that he believed that these requirements justified an equity increase. Mr. Thomas' presentation convinced the Fact Finder that the position is very important in running the power plant.

The City countered with testimony from Dave Borland, the Superintendent of the power plant. He testified that there was no need for an equity increase for just one classification within the plant. Mr. Borland stated that all eighteen employees did a fine job and to single out only one classification would adversely affect morale. In addition, he pointed out that the actual job duties were less today than in the past because the EPA forced the City to close two boilers for environmental reasons. Finally, he stated that the job description had not changed and that the engineers were performing the same duties that they historically performed.

While the Fact Finder believes that the engineers are crucial to the safe operation of the power plant, he is not convinced that they are underpaid. The testimony on this issue pointed out that the engineers are performing the same duties that they always performed. The main reason for the engineer's demand seems to be that other employees are receiving equity increases and, therefore, the engineers believe that they should also receive an increase. This is a reasonable position from the engineers' vantage point. However, jobs are paid according to the duties performed. There is no testimony that the job has changed or that there is some other reason that the wage should change. Clearly, there is a relative change in compensation between the engineers and other workers in the electric division. This is caused by changes in the nature of the work that some of the other employees perform or by the presence of a demonstrated inequity in pay rates. Neither of these factors affects the engineers. They are adequately paid for the job they perform. For a Neutral to recommend an equity wage increase, there must be a change in job duties that makes the old rate of pay inequitable, or there must be a large disparity between what jobs of similar skill within a jurisdiction are paid. There was no testimony that either of those factors is present in this case.

The next two positions to be considered are the Meter Technicians III and II. These are new positions and they are basically training positions within the electric division. The job responsibilities are many and varied, but the major component is servicing and reading electric meters. At times, especially in foul

weather, the technicians must perform other duties, including climbing poles and working with high voltage lines. The technicians also trim trees and work on traffic lights. Dave Kiser testified that the positions deserved a raise based on the nature of the work and the danger involved.

Paul Wilson, Superintendent of the Electric Field Division, testified on behalf of the City. Mr. Wilson testified that some of the positions in the division did deserve equity increases, but he did not believe that training positions are underpaid.

The same logic applies to the apprentice technicians as to the engineers. There was no testimony that the technicians are not fairly paid for the job they perform. The testimony convinced the Fact Finder that the technicians are an important part of the team that supplies electricity to the citizens of Dover. However, there was no testimony proving that the technicians are under paid. Simply listing job duties and requirements gives a Neutral a feel for the job. However, to recommend an equity wage adjustment, the Fact Finder must be convinced that the job requirements have changed necessitating a change in the wage, or comparisons must prove that the workers are underpaid compared to most other employees doing the same or similar work within a jurisdiction. The employees presented no such evidence. Again, the fact that a job has some danger attached to it and requires some independent action does not in and of itself prove the need for an adjustment. The base wage should be set based on the factors involved in the job. A change in the wage requires a change in the job requirements or a showing that the job is underpaid when compared to others doing the same work. Neither condition was present in this instance.

Finding of Fact: Neither the operating engineers nor the apprentice meter technicians proved that there is a need for an equity adjustment to their wages.

Suggested Language: None.

The next series of jobs are slated for an equity pay increase; the question is the size of the adjustment. The testimony by both sides indicated that the top four positions in the electric division, Line Crew Leader, Lineworker Journeyman, Meter Crew Leader, and Meter Technician Journeyman, all deserved a higher wage. Tom Johnson and Fred DeVore testifying for the Union and Paul Wilson on behalf of the City all came to the same conclusion. In addition, the testimony was that the wage progression should run from Line Crew Leader to Meter Crew Leader to Journeyman Lineman, and finally to Journeyman Meterman. These are the top four positions the division. Therefore, the testimony by both sides was that there is a need for an adjustment to the wages of these four individuals and that the Line Crew Leader should be paid the most followed by the Meter Crew Leader, etc.

The question then is the size of the adjustment. The Union is asking for \$2.25 over the life of the contract and the City is offering \$1.75 for the Line Crew Leader and the Meter Crew Leader, \$1.50 for the Meter Technician Journeyman,

and \$1.10 for the Lineworker Journeyman. The Union presented evidence from a number of jurisdictions, including Cuyahoga Falls and Hudson, that it claimed showed that the demanded raises were necessary to raise the affected positions to the market wage. The City presented evidence for the same jurisdictions, plus data from the AMP Ohio survey. The City claimed that these data showed that it paid more than the market for most positions, except the Line Crew Leader. The City believes that the wage scale it is offering raises the Line Crew Leader to the market and sets a scale where the Line Crew Leader is paid the most, followed by the Meter Crew Leader, etc.

A long dissertation on which comparables are best is not needed at this point. (Is Hudson comparable to anyplace?) Rather, the testimony at the hearing showed that the difference in the parties' positions is based on the method that the comparable wage is calculated. The Union figures are based on the highest rate paid in any comparable jurisdiction. The City figures are based on the actual wage paid in the comparable jurisdictions. That is, the parties' difference in the comparable wage(s) to be used as the yardstick depends on how the wage rate is calculated. There is validity in both positions depending on what question the data is supposed to answer. However, in this instance, wages are what an employee can take home and spend. The data show that some jurisdictions pay more than Dover at the top end, and the City's offer will not change that fact. The same data show that Dover actually pays more than most other jurisdictions in almost all classifications if the base of comparison is what an employee actually earns.

Given the data presented at the hearing, the Fact Finder is convinced that the City's offer is reasonable. Regardless of the comparison group the data support a conclusion that the Dover employees are well compensated by most measures. This may change over time, and the City employees may fall behind other jurisdictions. When this happens, the Union will be able to prove that it needs higher raises as a matter of equity. However, at this point in time, the data do not support such a conclusion.

Finding of Fact: The City's position on the size of equity increases for the affected classifications are reasonable based on the testimony of both parties and the data presented at the hearing.

Suggested Language: The City's suggested equity improvements for the Line Crew Leader, Meter Crew Leader, Lineworker Journeyman, and Meter Technician Journeyman classifications shall be entered into the contract.

Issue: Article V: Wages

Union Position: The Union demands \$0.65 per hour per year for each year of the proposed contract.

City Position: The City is offering \$0.55 per hour in the first year, \$0.45 per hour in the second year, and \$0.40 per hour in the third year of the proposed contract.

Discussion: The parties presented a number of exhibits outlining the financial situation in Dover. These exhibits show that Dover is in relatively good position, especially compared to many other municipalities. The Union believes that Dover can afford to pay the increases that it is asking for. The City, on the other hand, did not dispute that it has the funds to pay for a significant wage increase. The Auditor did, however, point out that the City's financial position is currently being affected by the economic slowdown that is gripping Ohio. Therefore, the question is not whether the City can afford the Union's demand, but whether the demand is reasonable.

Both parties also presented evidence of a wage history in Dover. The City's offer is in line with the wages historically paid by the City excepting the last contract which had a higher than usual settlement. The testimony on this issue pointed out that the City was forced by an arbitrator's ruling to buy back a "Me Too" clause that had been inserted into the contract. It was this buy back that gave the unusual bump to the base rate during the last contract. In effect, both parties' testimony on this issue was similar. Therefore, the wage history does show that the City's offer is not either unusually high or low.

There was also testimony on the impact of the PERS pickup. The parties agree that the City picks up the employees portion of the PERS payment. The Union pointed out that this was paid for by a wage freeze in a prior contract. The City testified that the PERS pickup is a valuable benefit and should be factored into any wage and benefit calculation used to determine the employees' wages. In other words, the Union contends that wages in Dover are not up to the level of other areas. The City for its part claims that the take home pay of the workers is the figure that must be considered and when the PERS pickup is added, the employees are well compensated. This debate simply shows that different conclusions can be reached when the same data is viewed from different vantage points. What is clear is that the take home pay of the workers is not substandard.

The final piece of information to be considered is the evidence from comparables. The City presented information from the Tuscarawas County Engineer, the City of Orrville, and New Philadelphia. The Union during its presentations proffered data from various areas including Cuyahoga Falls and Hudson. There was relatively little discussion of the comparables by either side.

What is clear is that these data do not support a conclusion that the Dover employees are poorly paid.

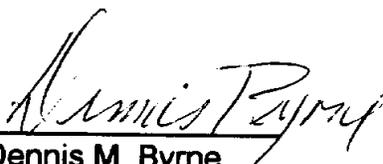
Taken as a whole, the data on wage comparisons presented by both parties show that the workers are paid relatively well. They are not the best paid, but they are not the worst paid either. Therefore, the wage recommendation will be made based on that conclusion. That is, there is no overriding reason to recommend a large equity increase in the general wage rate.

The recommendation is for an increase of \$0.60 per hour raise in the first year, a \$0.50 per hour raise in the second year, and a \$0.45 per hour raise in the third year of the proposed contract. The recommendation is based on the fact that the employees are a productive labor force. This conclusion is substantiated by the testimony of both parties. Second, the City is relatively healthy in a financial sense and the employees are in some ways responsible, at least partially, for that situation. Therefore, they should share in the financial well being of the City. And, finally there was some discussion of the raises negotiated by the police and firefighters, and these raises are somewhat comparable to the amount demanded by the Union. Without a precise discussion of internal comparables and given the fact that public safety forces are often the highest paid municipal workers, the Fact Finder believes that the recommended raise is a reasonable settlement when all the data is considered.

Finding of Fact(s): The City pays its workers relatively well according to the data presented at the hearing. In addition, the City's financial condition is better than most municipalities.

Suggested Language: The wage rates in Article V shall be increased by \$0.60 per hour in the first year, \$0.50 per hour in the second year, and \$0.45 cents per hour in the third year of the proposed contract.

Note: The parties stated that they had reached agreement on a number of issues during the fact-finding hearing. All of these TA's and signed issues shall be included in the prospective contract.


Dennis M. Byrne
Fact Finder