

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT-FINDING 2001 NOV -8 P 12: 08

BETWEEN

CITY OF TWINSBURG

AND

AFSCME AFL-CIO
OHIO COUNCIL 8, LOCAL 1313

BEFORE: Robert G. Stein

SERB CASE NO. 01 MED 07-0633

PRINCIPAL ADVOCATE FOR THE UNION:

Fred L. Hartsel, Staff Representative
AFSCME Ohio Council 8
1145 Massillon Rd
Akron, OH 44306

and

PRINCIPAL ADVOCATE FOR THE EMPLOYER:

Richard P. Gortz
Gortz & Associates Inc.
24100 Chagrin Blvd, Suite 260
Beachwood OH 44122

INTRODUCTION

On October 18, 2001, a fact-finding hearing was held in Twinsburg, Ohio. The parties presented to the Fact-finder five (5) unresolved issues. Both Advocates represented their respective parties well, clearly articulating the position of their clients on each issue in dispute.

In order to expedite the issuance of this report, the Fact-finder shall not restate the complete text of each parties' proposal on each issue but will instead reference the Position Statement of each party. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for Fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1**WAGES****Union's position**

SEE UPS.

Employer's position

SEE EPS.

Discussion

The other bargaining units in the City, Police and Fire, and the non-bargaining unit employees secured wage increases of 3.5% for 2001 and 2002. Prior to fact finding the parties agreed to make wages retroactive to January 1, 2001. The parties have also agreed upon the structure of wages and the length of the Agreement. Both parties have agreed to four distinct wage increase periods beginning on January 1, 2001. What remains in dispute is the amount of the wage increases and the amount of an inequity adjustment(s) for employees who are in the classification of groundskeeper.

Union witness, John Young, provided helpful testimony. He outlined the myriad of duties that golf course employees must perform, including precise mowing, irrigation and sodding of greens. The parties are in disagreement over an inequity adjustment for these employees. The Union is seeking an inequity adjustment of \$1.00 (.50 in 2001 and 2003) and the City is offering .75 per hour (.50 in 2002, .25 in 2003). The operation of the

golf course is dependent upon green fees that will vary according to a number of unpredictable facts, such as the weather and the economy.

Evidence presented by the City reveals that on a relative basis most classifications of City workers are in a competitive wage position with other comparable cities in northeast Ohio. The one exception to this observation is the position of groundskeeper, for which the parties have agreed upon the need for an inequity increase, but have not agreed upon an amount.

It is clear the City has done an excellent job of managing its finances and is in very good shape at the current time. However, it articulated its concern over the uncertainty of the economy and the current and projected downturn in income tax revenue. The City's concern over the future is valid; however, the employees face the same uncertainty. The average increases among public sector employees has been trending upward in recent months according to data supplied by the State Employment Relations Board. It is more common to see wage settlements and fact finding awards in the range of 3.5% to 4.0% and in some cases 4.5%.

Wage increase averages have limited utility given the fact that so many variables impact increases. One of those variables is the competitive position of the bargaining unit. In other words, what type of increase is appropriate to keep or make the bargaining unit competitive with other cities? After applying the state statutory criterion to the current situation in Twinsburg, it is apparent that in most regards (with the exception of groundskeeper and what the parties have already agreed upon) bargaining unit employees are already in a competitive position with surrounding cities. Therefore a wage increase that approximates the average increase and maintains this competitive position is most

appropriate at this time. I find the Union's position on the amount of inequity increase for groundskeeper to be reasonable; however, the timing of such an increase is adjusted due to the manner in which the golf course receives its funding.

Recommendation

Article ____ WAGES

See Appendix A

ISSUES 2 FAIR SHARE FEE

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

A union is a business, and like any business it needs paying customers to survive. The employees of the bargaining unit freely chose the Union as their representative, and it is unlikely any one of them thought for a minute that the subsequent representation and service provided would be at no cost. How many businesses would survive if customers

had the choice of paying or not paying for services rendered? Furthermore, most businesses require some reasonable period of commitment when providing “contract services.” Of course, employees who contract for such services also should have the ability to demand good service or have the option of changing it if not satisfied.

Every time a new contract is voted upon, the membership is required to reaffirm all the language of the Agreement, including the continuation of fair share. If the bargaining unit does not like the service for which it is paying, it has other options. It may recall or elect new representatives or it can vote to decertify the Union entirely. If it desires, it can choose another bargaining agent or choose not to have one. The Ohio Revised Code provides these protections to employees. The State Employment Relations Board, the administrative agency, continues to be very responsive to the rights of individual employees in this regard. Just like customers, the employees have numerous ways they can take their business elsewhere.

The issue of the reasonableness and the constitutionality of fair share fees have been asked and answered on numerous occasions. What more can be said about the First and Fourteenth Amendments’ compatibility with a fair share arrangement than has already been stated by a majority of the United States Supreme Court in the Abood case? When everyone has to pay for a service, supporters and critics alike, that service is more likely to be responsive and accountable to the needs of a majority of the members. When all bargaining unit members, who are likely to manifest divergent philosophical views, are financially contributing to its existence, it is also more likely that employees holding diverse views will take part in the administration of the Union. Under such a scenario, the Employer, who must by law respond to the Union’s concerns regarding wages and

working conditions has more assurance that the Union more closely reflects the majority view of the unit.

The Fact-finder is aware that this is the first contract for the bargaining unit. Collective bargaining for this group of employees is a new way of doing business. However, the overwhelming vote for union representation is testimony to the sincerity of the employees' commitment to this representative. The fact that the other bargaining units in the City have a fair share fee is a substantial reason why such a proposal in this context is reasonable.

Recommendation

Article ____ DUES DEDUCTION AND FARE SHARE FEE

See Appendix B

ISSUE 3

HOURS OF WORK AND OVERTIME

Union's positions

SEE UPS.

Employer's position

SEE EPS.

Discussion

The employer argues that all other employees in the City, with the exception of police, have overtime based upon over 40 hours of pay. The Fair Labor Standards Act addresses overtime on the basis of a 40-hour week; it does not address the issue of overtime beyond 8 hours of work in a day. The City also argues that sick leave should not be included as hours worked for purposes of calculating overtime. It points out that on the basis of internal comparable data only the fire department can include sick leave as hours worked. It is not uncommon for bargaining agreements in Ohio to exclude sick leave as hours worked for purposes of overtime eligibility. The testimony of Mr. Aleck, who spoke of taking care of a sick child or spouse, is a very real issue for some employees. Yet, there are also employees (hopefully few) who may take advantage of a system that includes sick leave as hours worked. It is also difficult to compare hours of work of a conventional 8 hours per day unit with a fire fighter unit. This is always a difficult issue to resolve, but it is clear that the trend in public sector bargaining is to not include sick leave in calculations of overtime.

The difference of opinion regarding the scheduling of lunch is closely aligned with the concept of scheduling work. It is a generally accepted principle that the scheduling of work is a managerial function. There are certainly exceptions to this rule, where bargaining unit members carry out scheduling functions, but in general the operation of a government or private entity works more efficiently if management is responsible for the scheduling of work, which includes non-work time.

Along with the right to schedule, comes the responsibility of management to avoid being arbitrary or capricious in its decision making. In other words, it is important that

decisions are operationally based and are reasonably related to the efficient operation of the city. I appreciate the testimony of Union President Ken Jcofsky in this regard. Some organizations become so distracted by demands placed upon them that they lose perspective on the basic needs of employees. However, I do not find that to be the case in this matter.

Instead I find the Employer's arguments regarding the scheduling of lunch to be both employee sensitive and operationally sound. Management is an art, not a science. The Employer is ultimately responsible for the provision of city services, and it must have the flexibility and creative latitude to organize the delivery of those services to meet the changing demands of a growing and diverse community. However, it is also important that the basic needs of employees are ensured. A reasonable parameter needs to be placed around the time for such lunch meals that is based upon the generally accepted nutritional eating patterns of Americans.

Recommendation

Article ____ HOURS OF WORK AND OVERTIME

See Appendix C

ISSUE 4 CALL IN PAY

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

Call out pay is provided to employees in order to compensate them for the disruption to their personal lives that may result from such work requirements. It is an integral part of any responsive city service and it is understood that this is a requirement of an employee's job. However, there is no way to predict the length of such call out duty. It may take minutes or it may take hours to address. The response time and the ability to correct a problem are the focus of such activity and not the length of time involved.

Therefore, what is important in designing a compensation system for call out is to create a flexible system that is fair to both the City and the employees involved. It must be a system that maintains an effective response time and is cost efficient. The system of paying 2 hours of call out time for less than 1 hour of work and 3 hours time for work beyond 1 hour appears to be a more reasonable approach to the unpredictable nature of call out work than what currently exists. It also mirrors what is typically found in other municipalities.

Recommendation

See Appendix D

ISSUE 5

SHIFT DIFFERENTIAL

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The current shift differential paid to second and third shift work is very competitive when compared to surrounding communities. The amount of differential is not in dispute. The method of payment is the crux of the dispute. Shift differential is a premium paid for having people work hours outside of the norm of daily work and social activities. It is typically based upon the hours worked by employees regardless of their regularly assigned hours. This approach is a common practice in both the public and private sectors.

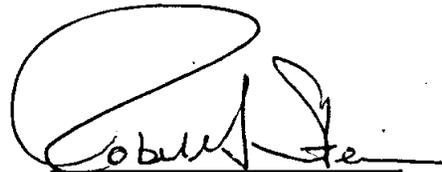
Recommendation

See Appendix D

TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to fact-finding are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above recommendations to the parties this 7th day of November, 2001 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein". The signature is written in a cursive style with a large, prominent initial "R".

Robert G. Stein, Fact-finder

Wages

Section 1. Employees shall be paid at the rate for their classification listed in Appendix A. Employees who are promoted to a higher classification shall be paid at the step which gives them an increase in pay. Employees who are reduced to a lower classification, either voluntarily or as a result of action by the Employer, shall be paid at the new classification rate, but at the same step as in their previous position.

Section 2. Newly hired employees shall be placed on the step which the employer determines best represents his/her experience. Employees shall move to the next highest step on each of their anniversary dates with the Employer, until they reach Step 6.

Section 3. In addition to their regular rate of pay, regular full-time employees shall receive a service allowance (longevity) based upon the employee's length of service with the Employer. The service allowance shall be added to the employee's base rate, and compounded for purpose of overtime. Service Allowance shall be adjusted at the next pay period following the employee's anniversary date of employment.

Service Allowance shall be as follows:

Less than 6 years	-0-	13 yrs.	.60
6 years	.26	14 yrs.	.65
7 yrs.	.31	15 yrs.	.69
8 yrs	.36	16 yrs.	.75
9 yrs.	.41	17 yrs.	.79
10 yrs.	.46	18 yrs.	.84
11 yrs.	.51	19 yrs.	.89
12 yrs.	.55	20 yrs.	.94

Section 4. Base wages shall be retroactive to January 1, 2001.

City of Twinsburg
AWARD

	Yr. 2001 3.50%						Yr. 2002 3.50%					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Bldg Maint Coord	\$ 18.38	\$ 19.32	\$ 19.65	\$ 20.28	\$ 20.94	\$ 21.63	\$ 19.02	\$ 20.00	\$ 20.34	\$ 20.99	\$ 21.68	\$ 22.39
Electrical Tech	18.32	18.97	19.63	20.32	21.03	21.53	18.97	19.63	20.32	21.03	21.76	22.29
Mechanic	18.01	18.67	19.24	19.85	20.42	21.16	18.64	19.32	19.92	20.54	21.14	21.90
Maintenance Coord.	17.66	18.21	18.76	19.32	19.92	20.54	18.28	18.85	19.41	20.00	20.61	21.26
Trades Craftsperson	17.54	18.09	18.77	19.38	20.02	20.73	18.16	18.73	19.43	20.06	20.72	21.45
Equipment Operator	17.07	17.60	18.12	18.67	19.24	19.85	17.66	18.21	18.76	19.32	19.92	20.54
Maintenance Person II ¹	16.09	16.68	17.10	17.60	18.12	18.67	16.65	17.27	17.69	18.21	18.76	19.32
Maintenance Person I ²							13.00	13.35	13.70	14.05	14.40	14.75
Sm Eng Mech ³	13.92	14.34	14.77	15.21	15.67	16.14	14.93	15.36	15.81	16.26	16.74	17.22
Asst Golf Super ³	13.39	13.79	14.20	14.63	15.07	15.52	14.37	14.79	15.22	15.66	16.11	16.58
Groundswoker II ³	10.76	11.09	11.42	11.76	12.11	12.48	11.66	11.99	12.34	12.69	13.06	13.43
Groundswoker I ³	8.73	8.99	9.26	9.54	9.83	10.12	9.55	9.83	10.10	10.39	10.69	10.99

	Yr. 2003 4.00%						Yr. 2004 4.00%					
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Bldg Maint Coord	\$ 19.78	\$ 20.80	\$ 21.15	\$ 21.83	\$ 22.54	\$ 23.28	\$ 20.57	\$ 21.63	\$ 22.00	\$ 22.70	\$ 23.45	\$ 24.21
Electrical Tech	19.72	20.41	21.13	21.87	22.63	23.18	20.51	21.23	21.97	22.74	23.54	24.10
Mechanic	19.39	20.09	20.71	21.37	21.98	22.77	20.17	20.90	21.54	22.22	22.86	23.68
Maintenance Coord.	19.01	19.60	20.19	20.80	21.44	22.11	19.77	20.39	21.00	21.63	22.30	23.00
Trades Craftsperson	18.88	19.47	20.21	20.86	21.54	22.31	19.64	20.25	21.02	21.69	22.41	23.21
Equipment Operator	18.37	18.94	19.51	20.09	20.71	21.37	19.11	19.70	20.29	20.90	21.54	22.22
Maintenance Person II ¹	17.31	17.96	18.40	18.94	19.51	20.09	18.01	18.68	19.14	19.70	20.29	20.90
Maintenance Person I ²	13.52	13.88	14.25	14.61	14.98	15.34	14.06	14.44	14.82	15.20	15.58	15.95
Sm Eng Mech ³	15.79	16.23	16.70	17.17	17.67	18.17	16.68	17.14	17.63	18.12	18.63	19.16
Asst Golf Super ³	15.21	15.64	16.09	16.54	17.02	17.50	16.08	16.53	16.99	17.47	17.96	18.46
Groundswoker II ³	12.38	12.73	13.09	13.46	13.84	14.23	13.14	13.50	13.87	14.26	14.65	15.06
Groundswoker I ³	10.20	10.48	10.77	11.07	11.38	11.69	10.86	11.16	11.46	11.77	12.09	12.42

Note 1: Employees in classification as of 1/1/02 or before

Note 2: Employees hired into Maintenance Person after 1/1/02.

Note 3: .50 added in 2002, .25 added in 2003, and .25 added in 2004.

Note 4: The employee currently in Laborer Class will receive 3.5% per year under this contract.

The position will be eliminated when he vacates for any reason.

DUES DEDUCTION AND FAIR SHARE FEE

Section 1 The Employer agrees to deduct Union membership dues in accordance with this Article.

Section 2 The Employer agrees to deduct regular Union membership dues once each pay period from the pay of any employee in the bargaining unit eligible for such deduction upon receiving written authorization signed individually and voluntarily by the employee. The signed payroll deduction form (see Appendix A) must be presented to the Employer by the employee or the Union. Upon receipt of the proper authorization, the Employer will deduct Union dues from the employee's check for the next pay period in which dues are normally deducted following the pay period in which the authorization was received by the Employer.

Section 3 The parties agree that the employer assumes no obligation, financial or otherwise, arising out of the provisions of this Article regarding the deduction of Union dues. The Union hereby agrees that it will indemnify and hold the Employer harmless from any claims, actions or proceedings by any employee arising from deductions made by the employer pursuant to this Article. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

Section 4 The Employer shall be relieved from making such individual "check-off" deductions upon an employee's: (1) termination of employment; (2) transfer to a job other than one covered by the bargaining unit; (3) layoff from work; (4) an unpaid leave of absence; (5) written revocation of the check-off authorization.

Section 5 The Employer shall not be obligated to make dues deductions from any employee who, during any pay period involved, shall have failed to receive sufficient wages to make all legally required deductions in addition to the deduction of Union dues.

Section 6 The parties agree that neither the employees nor the Union shall have a claim against the Employer for errors in the processing of deductions, unless a claim of error is made to the Employer in writing within sixty (60) days after the date such an error is claimed to have occurred. If it is found an error was made, it will be corrected at the next pay period that the Union dues deduction would normally be made by deducting the proper amount.

Section 7 The rate at which dues are to be deducted shall be certified to the Employer by the Treasurer of the Union during January of each year. One (1) month advance notice must be given the Employer prior to making any changes in an individual's dues deductions. The Employer shall remit the aggregate of Union dues deductions and a list of employees from whom dues have been deducted within ten (10) days of payroll date to: Ohio Council 8, 741 East Broad Street, Columbus, Ohio, 43205, Attention: Controller.

Section 8 Employees who are members of the Union may cancel dues deduction by directing a certified letter to the Union and the Employer in the fifteen (15) day period prior to the expiration of this Agreement.

Section 9 Each bargaining unit employee who is not a member of the Union shall, as a condition of employment, pay a fair share fee to the Union. The fair share fee obligation shall commence on the first of the month next following the employee's ninety-first (91st) calendar day of employment.

Section 10 Fair share fees shall be paid by automatic payroll deduction. Fair share fee deductions do not require prior authorization from the affected employees. Fair share fees shall be deducted in amounts determined by the Union.

Section 11 Fair share fee payroll deductions and transmittals shall be made in the same manner provided herein for dues deductions. The Employer shall provide the Union an alphabetical list of the names and addresses of each employee on whose account a fair share fee was deducted during the previous month including the amount of the deduction.

Section 12 Both the Employer and the Union intend that this Article be lawful in every respect. If any court of last resort determines any provision of this Article is illegal, that provision alone shall be void. Invalidation of any provision of this Article does not invalidate the remaining provisions. If a provision is judicially invalidated, the Employer and the Union shall meet within fourteen (14) calendar days after the entry of judgment to negotiate lawful alternative provisions.

Section 13 The Union warrants and guarantees to the Employer that no provision of this article violates the constitution or laws of either the United States of America or the state of Ohio. Therefore, the union hereby agrees that it will indemnify and hold the employer harmless from any claims, actions or proceedings by any employee arising from deductions made by the employer pursuant to this Article. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

HOURS OF WORK AND OVERTIME

Section 1. This Article is intended to define the normal hours of work per day or per week in effect at the time of execution of this Agreement. Nothing contained herein shall be construed as preventing the Employer from restructuring the normal work day or work week for the purpose of promoting efficiency or improving services; from establishing the work schedules of employees; or establishing part-time positions. This Article is intended to be used as the basis for computing overtime and shall not be construed as a guarantee of work per day or per week.

Section 2. The standard work week for full-time employees covered by the terms of this Agreement shall be forty (40) hours, with seven (7) consecutive days for computation of pay and overtime purposes. Generally, the workweek shall be Monday through Friday. The work week shall be computed between 12:01 a.m. on Sunday of each calendar week and at 12 o'clock midnight the following Saturday.

Section 3. Each employee of the bargaining unit shall be granted a one-half ($\frac{1}{2}$) hour unpaid meal period during each regular work shift, which shall be scheduled by the Department Head approximately midway through the shift. (employer).

Section 4. Each employee shall be granted two (2) fifteen (15) minute rest periods with pay, which will be scheduled whenever practical, approximately midpoint in the first half of the employee's regular work shift and approximately midpoint in the second half of the shift. Rest periods should be taken at a time and in a manner that does not interfere with the efficiency of the work unit. Rest periods include all time away from actual work and/or the work site. The rest period is intended to be a recess to be preceded and followed by an extended work period and may not be used to cover an employee's late arrival to work or early departure, nor may it be accumulated if not taken. The rest period may not be scheduled immediately before or after the employee's scheduled lunch period.

Section 5. When an employee is required by the Employer to work more than forty (40) hours in a work week as defined in Section 2, above, he/she shall be paid overtime pay for all time worked in excess of forty (40) hours in a week. "Time worked" shall include vacation time, holiday time, compensatory time, but not sick leave. Overtime shall be paid at the rate of one and one-half ($1 \frac{1}{2}$) times the employee's regular hourly rate of pay.

Section 6. When overtime work, other than snow removal and weekend work at Gleneagles, is determined to be necessary by the Employer, employees in the effected classification(s) shall be asked first, followed by any other qualified employees in the department. Should an insufficient number of employees volunteer, the Employer may fill the overtime requirement through any means, including requiring employees in the classification(s) effected, in inverse seniority order, to work such overtime as a condition of employment. When work tasks continue past the regular workday and into overtime, the crew members, including seasonal and part-time employees, who worked the assignment on regular hours may complete the project for that workday.

Section 7. The opportunity to work overtime shall be equalized as much as possible in each classification by the use of a rotation list.

Section 8. The Parties agree that snow removal overtime and weekend work at Gleneagles shall continue in the manner which existed prior to this agreement. Second and third shift assignments for winter (generally, November through March) shall also continue to be made in the manner which existed prior to this agreement, and that regular assignments shall be announced a minimum of thirty (30) days in advance of the start of the winter shifts.

Section 9. Overtime pay and docking for tardiness shall be calculated to the closest one-quarter ($\frac{1}{4}$) hour.

Section 10. Employees may accumulate compensatory time off in lieu of overtime. An employee who wishes to request compensatory time in lieu of overtime pay shall designate this request in writing to the Employer prior to the end of the pay period in which the overtime is worked. Compensatory time shall accumulate at the rate of one and one-half (1-1/2) hours per hour of overtime worked. Employees may not accumulate more than forty (40) hours of compensatory time. Hours earned over forty (40) will be paid. During any time period, the Employer may deny the accumulation of compensatory time for all employees and require employees to take pay for overtime worked, or offer overtime to be paid in compensatory time only. An employee has the right to refuse overtime when only compensatory time is offered as compensation.

Section 11. An employee wishing to use compensatory time shall request such time a minimum of two workdays in advance. The two workdays notice may be waived by the supervisor. The use of compensatory time may be denied due to work schedules and insufficient staffing, but otherwise shall not be unreasonably denied.

REPORT AND CALL-IN PAY

Section 1. An employee who reports for work on his/her scheduled day and has not been advised not to report due to inclement weather, equipment breakdown, lack of working materials, or other reasons not in the control of the Employer, shall be guaranteed two (2) hours pay.

Section 2. Whenever an employee is called to work outside his/her regular work day hours which do not abut his/her regular shift hours, he/she shall be paid a guaranteed minimum two (2) hours pay, at the appropriate rate. If the employee works more than one (1) hour on a call-in which does not abut his/her regular shift hours, he/she shall be guaranteed a minimum of three (3) hours pay at the appropriate rate.

Shift Differential

Section 1. Employees who work hours between 5:00 P.M. and 10:59 P.M. shall receive a shift premium of five percent (5%) of their base wage for such hours, regardless of the shift assigned. Employees who are scheduled and who work second shift shall also receive five percent (5%) of their base wage for all hours worked.

Section 2. Employees who work hours between 11:00 P.M. and 4:00 P.M. shall receive a shift premium of ten percent (10%) of their base wage for such hours, regardless of the shift assigned. Employees who are scheduled and who work third shift shall also receive ten percent (10%) of their base wage for all hours worked.