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STATUTORY IMPASSE PROCEDURE
OHIO STATE PUBLIC EMPLOYMENT RELATIONS BOARD
FACTFINDING RECOMMENDATIONS

IMPASSE BETWEEN: *
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CITY OF EUCLID * SERB Case No. 01 MED 09 0868
*
Department of Parks & *
Recreation Maintenance and *
Animal Control Officers * Decision Issued: November 7, 2003
*
-and- * Jonathan Dworkin, Factfinder
*
CITY, COUNTY AND WASTE *
PAPER DRIVERS UNION *
Teamsters Local 244 *

Representing the City
Phyllis Vento, Law Director

Representing the Union
Jarrell Williams, IBT Business Agent

This is the second of three factfinding disputes between the City of Euclid, Ohio and the City, County and Waste Paper Drivers Union, Teamsters Local 244. Sixteen employees of the City's Parks & Recreation Department (including one Animal Control Officer) are represented by the recognized Bargaining Unit.

The first factfinding dealt with primarily economic benefits for the Union's Waste Water Treatment Unit.¹ The decision, twenty-seven pages long, recited the statutory guidelines in OHIO REV. CODE §4117.14(G)(7), the extent to which they applied in that case, the City's economic arguments, and issues of internal parity—

¹ SERB Case No. 01 MED 09 0870.

prevalent in both parties' positions. The Factfinder believes it is appropriate to summarize his earlier preliminary comments to the extent they apply here, but it is unnecessary to burden this decision with another long, detailed statement of facts. Except for one or two special issues that will be more fully addressed, the Parks & Recreation impasse items are identical to those in the Waste Water Treatment factfinding. The parties have that decision, and can refer to it for a more complete disclosure of what the Factfinder considered (or failed to consider) here.

IMPASSE ITEMS

ARTICLE 7 *Compensation*: All City employees accepted a wage freeze for 2002. The following year, the Police went to conciliation (binding interest arbitration) and were awarded raises of 4.5% for 2003, 4% in 2004, and 4% in 2005. This was substantially above Euclid's backloaded offer of 2.5% + 3.5% + 4%, but the award was binding. Subsequently, the Firefighters rejected the City's wage offer and a factfinding report recommended that they receive the same wage increments as the Police. Council accepted the recommendation without moving to conciliation.

At that point, there was internal parity between safety forces, but it encompassed only two of Euclid's ten bargaining units. The American Federation of State, County and Municipal Employees (AFSCME), Ohio Council 8, Local 2509

represents non-exempt employees of Streets & Sewers, Public Buildings and Lands, Traffic Signs & Signals. It negotiated next. It accepted the City's wage offer and, in the Factfinder's judgment, that event wiped out the influence of internal parity for the current contractual term.

The Union demands wage increases that mirror those received by the safety forces – 4.5% + 4% + 4%. The City contends that the AFSCME settlement – 2.5% + 3.5% + 4% should be the recommendation.

ARTICLE 7 *ACO On-Call Pager Premium (New Language)*: Currently, the City employs only one Animal Control Officer (ACO). That individual must carry a pager and is on call twenty-four hours per day, seven days per week. Since the ACO is liable to be paged at any time, his/her private life is abnormally restricted. For example, s/he cannot take the risk of drinking wine with dinner or even taking prescription drugs containing codeine. And the current ACO could not take night classes to improve her educational achievements because she was unable to predict when her pager might summon her out of class to carry out her duties for the City.

For these reasons, the Union requests a provision granting all ACO's who are required to carry pagers \$1.00 per hour, in addition to other wage increments, for the duration of the new Agreement.

The City rejects this proposal for new language and makes no counter offer.

ARTICLE 7 *Commercial Drivers License Premium:* Some employees in this Unit must have commercial drivers licenses (CDL's) to do their jobs. In the past, they have used their own time and money to obtain and periodically renew those licenses. The Union contends that this put the employees at an unfair disadvantage – that their CDL's signify experience, skills, and personal costs that merit wage recompense. Therefore, it proposes a \$1.00 increase be added to their base rates. The City rejects the proposal.

ARTICLE 7 *Uniform Allowance:* The City voluntarily granted the Waste Water Treatment Unit a uniform allowance of \$700, up \$400 from the last Agreement. The Union believes that fairness requires parity with this Unit, and it should receive the same benefit. The City disagrees and offers no counter proposal.

ARTICLE 8 *Shift and License Premium:* Article 8, Sections 8.5 and 8.7 of the current Agreement provide for shift premiums and call-in pay. They state:

SECTION 8.5

All employees who are ordered to work a shift other than first shift shall receive a shift differential of fifty-five cents (55¢) per hour. For purposes of this Section, first shift shall be the shifts described in Section 8.3 of this Article for Parks and Recreation employees.

SECTION 8.7

Employees of the Bargaining Unit called in to work at a time when they are not otherwise scheduled to work shall be paid a minimum of four (4) hours compensation.

The Union asks for increased shift premium only for the single employee who serves as ACO (20¢ increase to 75¢ per hour). It also requests a 50¢ per hour pay increment for the ACO Foreman.² The City rejects the proposal.

ARTICLE 8 *Working out of classification*: The language proposed by the Union on this item is: “Bargaining Unit employees shall be paid for all hours worked outside their classification.” This is demonstrably ambiguous language. What the Union means is that employees assigned to a higher classification than their own shall receive the higher-level pay until they return to their own classification. The City rejects this proposal.

ARTICLE 9 *Health Benefits*: The Factfinder explained the difference in the parties positions fully in the Waste Water Treatment Decision. He need not repeat it here. As he said in that Factfinding, this is the one area where parity is essential. The Union’s desire to retain the “cadillac” plan for its employees is understandable, but cannot prevail. These employees will have to make the same contributions and take the same cuts as all the others. Euclid is no different from any municipality in this respect. Fully paid health insurance has become a dinosaur; it is not affordable; and the Union knows this as well as the City.

² The ACO Foreman is a “working foreman” or lead person, and not actually a supervisor. He belongs to the Bargaining Unit.

ARTICLE 28 Discipline: The parties have a progressive-discipline program which conforms to well-recognized principles of just cause. The question raised by the Union in this proposal is how long discipline should remain on an employees record as the stepping stone for more severe penalties. Section 28.6 now provides: “Each disciplinary action shall remain effective in the employee’s personnel file for twenty-four (24) months after the date of its issuance.” The Union initially proposed that the twenty-four months be changed to twelve months. During the hearing, the parties reached a tacit settlement, which the Factfinder will recommend – that a provision be added to Section 28.6 expunging verbal warnings and cautionings after twelve months but that more severe disciplinary impositions will continue to remain active twenty-four months.

**FACTS AND CONTENTIONS;
FACTFINDING DECISIONS**

As stated, the only standards presented to the Factfinder for consideration were internal parity and the impoverishment of the general fund. No one disagrees that Euclid has attempted to sustain a high level of services in the face of severely decreasing revenues. It has suffered loss of industries, income reductions that automatically flow from an aging and diminishing population, loss of support from the State of Ohio, and ever-growing costs to deliver the same bene-

fits to its citizens. The electorate of the City has taxed itself highly, and Euclid still cannot make ends meet.

Parks and Recreation is supported by both the general fund and a special fund which depends partly on private donations. The Recreation portion is wholly self sustained and comes out of a user fee fund, but user fees are down. They are \$20,000 less than they were this time last year and repairs have been required. Vandalization also has taken a toll. The fact is that the budget provides for no employee increase, yet the City is willing to make cuts where it must because it realizes that reasonable employee raises are legitimate and necessary components of the functions it performs.

It is the Factfinders opinion that parity is not an issue except for health care. Each Unit, even though it belongs to the same Union, must bargain on its own in the current economic climate. These employees might note with distress that economic recommendations for Waste Water Treatment employees were higher than they will be for them. But the Factfinder made the reason clear in the earlier decision. The other Unit is paid from a separate fund financed by a consortium of municipalities, and that fund is in good condition. The funds to pay these employees plainly are not.

Most of the Factfinder's reasoning will be apparent from his recommendations. However one item stands out and needs to be better defined here. It is the dispute over Article 7, Section 7.6 – Uniform Allowance. The Section provides:

Consistent with past practice, the City will pay for the purchase and repair of uniforms for Animal Control Officers up to a minimum annual amount of Two Hundred Fifty dollars (\$250.00) per employee. For employees in the Parks and Recreation Department, the City will pay for the purchase of work shoes or boots in the amount of One Hundred Fifty Dollars (\$150.00) each year of the contract. The City will provide one set of coveralls each week in its uniform distribution to those Parks and Recreation workers who request them during the winter season.

The City severely criticized the Union's demand, calling it just a "hidden wage increase" that was neither warranted nor commensurate with the actual costs of work clothing. In its position statement, it argued:

The Union's request (on behalf of Parks employees) for parity with WWT [Waste Water Treatment] employees' uniform allowance is without merit. They have not presented sufficient evidence of their actual expenses to justify a \$700 uniform allowance increase paid directly to the employee. The City provides summer uniforms to the Parks employees. Further, the Union unreasonably refuses to work with administration in the purchase of uniforms. The City cannot help but question the employees' motive when they refuse to allow the City to purchase uniforms that the employees select, and they insist on receiving the money directly paid to the individual. The City has historically provided the Parks employees uniforms, and is willing to work with employees in the future selection of uniforms, but will only agree to the \$300 increase in uniform allowance previously offered.

Having carefully reread the City's arguments and his notes the Factfinder is at a loss to fully understand this issue. If there was no error in the above statement, it would seem that all the City is offering is an increase from \$250 to \$550 and that the Union is demanding an increase to \$950. But that is not what the

Factfinder heard the Union say. What he heard was that the Union wanted parity with Waster Water Treatment, which would indicate a request for a raise of \$300. And the City says that it offered \$300 (\$250-uniforms \$150-boots + \$300 = \$700).

Union witnesses made stunning arguments refuting the implicit contention that no raise is warranted. They testified that the clothing contractor used by the City does not supply adequate insulated winter coveralls and that workers engaged in snow removal and other outdoor activities have had to buy there own. After reviewing the catalogue and prices, the Factfinder believes that an offer of \$300 additional for boots and uniforms is inadequate. Relieving the City of the necessity of purchasing winter coveralls, gloves and footwear will add to its resources but these additions should be returned to the employees who will be required to purchase the winter gear themselves. For this Unit only, because of the compelling evidence that was introduced in the hearing, the Factfinder will recommend that Section 7.6 be amended to an allowance of \$800 for each Parks & Recreation employee for clothing and boots.

PROPOSALS DROPPED OR SETTLED PRELIMINARY RECOMMENDATIONS

The Union brought several other proposals to factfinding which were discussed during the hearing, mediated, and either dropped or settled. Some of them the Factfinder told the parties he was going to grant or deny, so that no

further explanation is necessary. In order to clarify the record, the Factfinder will now make recommendations on those items consistent with what took place at the factfinding hearing.

ARTICLE 5 *Seniority*: Add the following language where appropriate:

Employees who are laid off shall be laid off on the basis of seniority beginning with the least senior employee and ending with most senior employee.

ARTICLE 5 *Seniority*: Add the following language where appropriate:

Whenever Bargaining Unit employees are selecting vacations and holidays Bargaining Unit employees shall select their times before non-union employees. Seniority shall be the deciding factor for selection of times within the Bargaining Unit.

ARTICLE 6 *Vacancies*: Add a clause to Article 6 stating: "All vacancies that occur within any of the Teamsters Local 244 Bargaining Units shall be posted and made available for all Teamsters Local 244 members who are employed in all Bargaining Unit locations by the City of Euclid."

ARTICLE 7 *Compensation*: The Factfinder recommends **AGAINST** the Union's proposal to amend Section 7.6, adding \$50 per year to the ACO uniform allowance.

ARTICLE 8 *Shift Premium*: The Factfinder recommends **AGAINST** the Union's initial proposal to add 50¢ per hour to the ACO Foreman wage.

ARTICLE 8 *Hours of Work*: The recommendation is to add the following clause to Article 8:

The regular hours of work for all Parks & Recreation employees assigned to the shop or maintenance garage shall be 7:00 a.m. to 3:30 p.m. each week day for the duration of the Agreement.

ARTICLE 11 *Vacations*: It is recommended that the parties adopt the following provision: "All Bargaining Unit employees who, because of work requirements are unable to take vacation and/or holiday time off during the year in which the vacation and/or holiday occurs, shall be allowed to carry all accrued but unused vacation and holiday time to the end of the next calendar year."

During mediation, the Union was induced to withdraw its other vacation proposal. Consequently, it is not recommended for this Agreement.

ARTICLE 12 *Sick Leave*: The following Union proposal is a clarification of language that needs to be in the Agreement. Therefore, it is recommended that language be added to Article 12 specifying that the term "immediate family" has the same definition as set forth in Article 15 (Bereavement Leave)

SPECIFICATION OF “OTHER DUTIES AS ASSIGNED” (New Language):

The Union proposed that Management should be required to specify the duties of a classification and set boundaries on Supervision’s right to assign duties other than those listed from time to time. Granting this request would effectively turn the Teamsters into a craft union, which it is not and which it has never been. It is an industrial union, which means that requiring employees to perform extra duties or even cross occupational lines is permitted.

The Union already has the protection it seeks by the inherent restriction on Management Rights that exists, with or without language, whenever an employer bargains with a union. That restriction prevents supervisors or managers from subjecting employees to unusual dangers, or treating them arbitrarily, discriminatorily, or capriciously. Thus, if a member of this Unit is given other assignments which violate the restriction, s/he already has a right to grieve and receive a remedy for the wrong.

In the Factfinder’s judgement, this is sufficient insulation against supervisory excess. The danger is that more concrete job descriptions could be applied so strictly as to annul fundamental rights of Management and cause essential work to go undone. Accordingly, the recommendation is **AGAINST** this Union proposal.

RECOMMENDATIONS ON ITEMS REMAINING AT IMPASSE

The following are the factfinding recommendations on impasse items still at impasse for the 2002-2005 Collective Bargaining Agreement between the City of Euclid, Ohio and the Parks & Recreation Maintenance and Animal Control Officers Unit represented by the City, County and Waste Paper Drivers Union, Teamsters Local 244. The parties are reminded that they have the right to renegotiate, alter and amend any of these recommendations by mutual agreement.

ARTICLE 7 - COMPENSATION PLAN

SECTION 7.1

Employees of the bargaining unit shall receive the following scheduled rate increases:

Effective January 1, 2002	0%
Retroactive to January 1, 2003	3.0%
Effective January 1, 2004	3.5%
Effective January 1, 2005	4.0%

Evidence of the intrusion on the ACO's private life was compelling and the Factfinder believes that compensation is warranted. However he recommends **AGAINST** adding \$1.00 to the wage of the Classification. He does intend, however, to make provision for off-shift assignment of the employee in Article 8 – Shift Premium. He will recommend the Union's proposal and add 25¢ to it.

SECTION 7.2 As the City's argues, possessing a commercial drivers license is a job skill that does not warrant adding \$2,000 to an employee's annual wage. However, In lieu of the Union's request, the Factfinder recommends that the following language be added to this Section:

The City shall pay all members of the Bargaining Unit who are required to have and maintain a commercial drivers license for their jobs the annual cost of renewal plus two hours' wages at regular rates each time the license is renewed. The employee claiming such payments shall furnish the City with necessary receipts.

SECTION 7.6 The Factfinder recommends that this Section be amended as follows:

Consistent with past practice, the City will pay for the purchase and repair of uniforms for Animal Control Officers up to a minimum annual amount of Two Hundred Fifty Dollars (\$250.00) per employee. For employees in the Parks & Recreation Department, the City will pay each employee Five Hundred Dollars (\$500.00) for protective winter clothing and Three Hundred Dollars (\$300.00) for work shoes or boots each contractual year.

Notwithstanding past practice, the City shall no longer be liable to supply employees in Parks & Recreation with coveralls or other winter clothing. Each employee shall be responsible for purchasing and maintaining his/her own boots and clothing.

ARTICLE 8 - HOURS OF WORK

SECTION 8.2 The Factfinder recommends **AGAINST** the Union's proposal. Current language should be carried forward.

SECTION 8.5 Add the following:

Animal Control Officers assigned to work a shift other than their regularly assigned shift shall receive a shift differential of one dollar (\$1.00) per hour for every hour worked outside of their normal, assigned shift.

ARTICLE 22 - LONGEVITY PAY

The Factfinder recommends **AGAINST** the Union's request to delete Section 18.2 from the Agreement. That provision should be carried forward, but the City's counter offer is recommended for the next Agreement. That means that employees who are not red-circled under Section 18.2 will receive continuous-service bonuses. It also means that longevity pay for eligible employees will be capped at \$7,500.

ARTICLE 23 - HEALTH BENEFITS

The Factfinder recommends adoption of the City's proposal. Added to this recommendation, however, is that no employee of this Unit will be charged for or required to pay co-payments or premiums shares unless and until employees of every other City bargaining unit are required to make such payments.

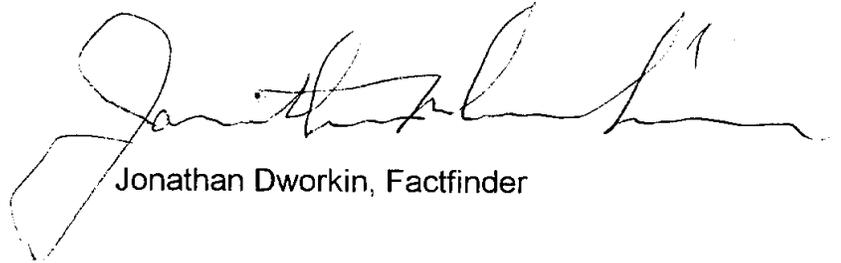
ARTICLE 28 - DISCIPLINE

SECTION 28.6 Amend as follows:

Written reprimands and suspensions shall remain effective in the employee's personnel file for twenty-four (24) months after the date of issuance. Verbal reprimands and cautionings shall be expunged from an employee's record after twelve (12) months.

* * *

These factfinding recommendations were issued at Lorain County, Ohio, November 7, 2003. True, individually signed copies were sent this day by United States Express Next-Day mail to Jarrell B. Williams, President, Teamsters Local Union 244, Representative of the Waste Water Treatment Department Employees of the City, County, and Waste Water Drivers Union, 2800 Euclid Avenue, P.O. Box 5247, Cleveland, Ohio 44101-0247 and to Phyllis Vento, Director of Law, City of Euclid, 585 East 222nd Street, Euclid, Ohio 44123-2099. A copy also was sent by regular US mail to SERB.



Jonathan Dworkin, Factfinder