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STATUTORY IMPASSE PROCEDURE
OHIO STATE PUBLIC EMPLOYMENT RELATIONS BOARD
FACTFINDING RECOMMENDATIONS

IMPASSE BETWEEN: *
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CITY OF EUCLID *
Building and Housing Inspectors *
*
-and- *
*
CITY, COUNTY AND WASTE *
PAPER DRIVERS UNION *
Teamsters Local 244 *

SERB Case No. 01 MED 09 0869
Decision Issued December 7, 2003
Jonathan Dworkin, Factfinder

Representing the City
Phyllis Vento, Law Director

Representing the Union
Jarrell Williams, IBT Business Agent

This is the last of three factfinding disputes between the City of Euclid, Ohio and the City, County and Waste Paper Drivers Union, Teamsters Local 244. Seven Building and Housing Inspectors comprise the Unit for which the Local is recognized as exclusive Bargaining Agent.

All the impasse items are economic and, unlike the two previous factfindings, recommendations for increases, if accepted, will be paid entirely out of the City's general fund. In the Waste Water Treatment dispute,¹ the Factfinder fully reviewed the evidence on Euclid's bleak financial condition and the sacrifices made by the citizens and employees (both organized and exempt employees) to

¹ 01-MED-09-0870

preserve the City's historic high-level of services. Unfortunately, due to continuing depreciation of investments, loss of industry and population, the tax base has declined and the general fund plainly cannot afford to pay for all the improvements in wages and benefits that the Bargaining Unit probably deserves. But the Factfinder has also made it clear that, in his opinion, the City cannot require the employees to support the services they provide. In other words, middle ground must be found between employee entitlements and City needs, and it is up to Euclid's Council to find the wherewithal to accomplish a reasonable compromise.

It seems unnecessary for the Factfinder to attempt to reword everything he said in the Waste Water Treatment decision. Instead, he will copy some of the preliminary observations from that decision here, rewording it where appropriate.

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The City of Euclid, Ohio (population about 52,000) consists of just over ten square miles on the northeast boundary of Cleveland. Though a significant number of people who live there work and earn their livings in Cleveland, it would be incorrect to diminish Euclid by characterizing it as just a "bedroom community." It is much more than that. While it does have large residential sections – streets with single and multiple family homes, condominiums, apartment buildings, high-rises, the City also has proved to be attractive for industrial and commercial devel-

opment. Several nationally prominent corporations have made Euclid their homes and have enriched the City's tax base.

For more than a decade, and especially since congress enacted the North American Free Trade Agreement (NAFTA), employers that were once reliable sources for community revenues have been abandoning northern areas of the United States. Consequently populations have diminished and funding for government, schools, community services and projects have become less available. To their credit, the citizens of Euclid tried to meet the challenge by increasing their municipal income tax to 2.85 percent – one of the highest if not the highest in the State of Ohio. Nevertheless, this City's expenses continue to exceed its revenue. In 2001, the general fund was \$1,619,931 below what City Council had budgeted for the year.

Euclid's high municipal income tax was not enough to intercept the dilemma of diminishing funds and rising cost of City services. Loss of industries, unemployment, an aging and decreasing population, low interest rates, have taken a severe toll on Euclid's finances. And on top of those problems, the State has notified all Ohio municipalities that it is going to freeze local government funding.

The ten bargaining units that negotiate with the City were sensitive to these difficulties, and each showed itself willing to do its share. Most notably, all ten agreed to a wage freeze for year 2002. Police and Fire personnel deferred compensatory time to avoid layoffs; the one hundred forty non-union employees went

without raises for two years and, in fact, took a 6 percent decrease for July through December 2002. Now the Teamsters Units seek settlements that will put them back into a wage status that will allow their members the dignity of supporting themselves and their families without suffering diminishing spending power due to inflation and other inevitable economic causes.

* * *

The impasse consists mainly of core issues that are identical to those considered in the companion factfindings – 1) wages, 2) uniform/clothing allowance, 3) longevity pay, 4) health benefits. In addition, the dispute includes two Union proposals, specific to this Unit, which the City has rejected. The first seeks an amendment to Article 7, §7.4 which would grant every represented employee top pay after one year's service. According to testimony, it currently takes five years for an individual to reach the highest pay in his/her classification. The second proposal falls under Article 8, and also under the Management Rights clause that is incorporated into the Agreement pursuant to Ohio law. Here, the Union demands more flexible hours for Building and Housing Inspectors, and to eliminate the current regulation for employees to clock out for lunch.

FACTS, CONTENTIONS AND FACTFINDER’S OPINIONS

In OHIO REV. CODE §4117.14(G)(7), the legislature established guidelines and parameters for factfinders and conciliators involved in public-sector interest disputes. Of course, no factfinder can premise recommendations on guidelines that lack a supporting foundation in evidence furnished by either party. It is not a factfinder’s function independently to look for rationale for his/her judgments that are extraneous to the parties’ evidential presentations. These limitations have signal applicability to this dispute, because the evidence and the arguments of the City and Union were purposely circumscribed to: ability to pay, equitable treatment, and parity.

Ability to pay falls under Subsection (c) of the statute:

c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

Parity, under the statute, calls for a comparison of wages and benefits paid to employees doing similar work in both private and public sectors. But, that is not the kind of parity that the Teamsters or the City of Euclid addressed in this case. They asked only for evenness among all employee groups represented by the

City's ten bargaining units. The guideline dealing with that kind of parity is not as specific as the others. It is the general catchall that ends the statutory list:

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Of course, Subsection (f) also encompasses issues of ordinary fairness and fundamental equity.

These issues, together with the past Collective Bargaining Agreement between the City and Union were all that the Factfinder used to come to the following recommendations. As stated, they were all that the parties presented.

* * *

ARTICLE 7 - COMPENSATION

Section 7.1 – (Wage Increases; Internal parity): Under the last Agreement this Unit received raises of 3.5% January 1, 1999, 3.5% January 1, 2000, 2% January 1, 2001. Like all other City employees, both inside and outside bargaining units, the Building and Housing Inspectors accepted 0% for 2003 in recognition of the City's financial difficulties. It is noteworthy that the safety forces and AFSCME did the same and entered into 2003 bargaining before the Teamsters.

The results of their bargaining were, in the Factfinder's judgment, thoroughly destructive of any internal -parity argument on the subject of wages. There was absolutely no observable wage blueprint for the contracts achieved by police and fire units and the settlements the City made with AFSCME. Through factfinding and conciliation the Police achieved 4.5% + 4% + 4%. The Firefighters obtained the same in factfinding, and the City accepted the package without going to conciliation. Then the City made the deal with AFSCME that broke the pattern. – 2.5% + 3.5% + 4%.

As might have been expected, the parties are now at opposite poles on what is internal parity. The Union quite naturally believes that its employees should receive raises equal to those given to the safety forces – 4.5% + 4% + 4%. The City counters that it cannot afford the cost, that its AFSCME employees accepted less, and that their settlement of 2.5% + 3.5% + 4% should be recommended here.

As the Factfinder commented in the two previous disputes, he does not feel bound by any non-existing wage pattern. He does note that the police conciliation award was based on hard evidence that Euclid Officers were paid much less than their counterparts in comparable communities. No such documentation was furnished in this dispute. Nevertheless, the Factfinder declines to follow the AFSCME pattern for the same reasons that he declined to follow it in the Parks and Recreation dispute. The reason is that, in view of the 0% raise in 2002 and

the added cost of health care that all employees will be required to accept, he finds that an initial raise offer of only 2.5% is too low. Accordingly, his recommendation will attempt to balance the legitimate needs of the City's workers and the serious shortfall projections in the general fund. That recommendation will be the same as it was for Parks and Recreation: 3% + 3.5% + 4%.

Section 7.4 (Union Proposal): According to the apparent mutual understanding of the parties, employees in this Bargaining Unit have to serve in their positions five years before reaching the top wage for their classifications. The Union proposes language cutting the period to one year, and in view of its position on longevity pay, its argument here seems inconsistent:

The Union seeks to ensure that all bargaining unit employees receive equal pay for equal work. Longevity is used to reward employees for their tenure. The Union takes the position that a qualified bargaining unit employee should not earn lower wages than another qualified employees simply on the basis that one employee has more tenure than another.

The City rejects the proposal.

The Factfinder has most carefully reviewed the Agreement and all the evidence presented to discover where this alleged two-tiered wage schedule came from. The parties seemed to imply that there was some kind of memorandum or side agreement made five years ago, but none was introduced into evidence. What the Factfinder did discover was that Sections 7.4, 9.1 and appendix A more

than fulfill the Union's request and that if these provisions have not been followed, the Agreement plainly has been violated. Section 7.4 coupled with 9.1 establish a ninety-day probationary period in which a new hire is paid 50¢ less than the classified wage. After successfully completing probation, he or she supposedly moves up to the full pay of the classification. The provisions state:

SECTION 7.4:

Original employment to any position or job defined shall be made at a minimum rate ***and upon completion of the probationary period described in Article 9 he/she shall advance to the salary designated in Exhibit A for the position hired.*** For purposes of this Section, the minimum rate shall be defined as the position's regular hourly rate, as designated in Exhibit A, reduced by fifty cents per hour (\$0.50/hour). [Emphasis added.]

. . .

SECTION 9.1:

After initial appointment or promotion, an employee shall be considered probationary until ninety (90) calendar days after completion of any and all required training. Such probationary period may be extended for reasonable amounts of time at the discretion of the employee's Director.

Exhibit A lists the wage for each classification with no differentiation for tenure. Anyone looking at it would conclude that all Housing Inspectors who have passed their probationary period are paid the same wage: each Building Inspector is paid equally once his/her probation ends. But the Factfinder's notes indicate

that something else might be the case. The Union testified that in 1995, when it organized this Unit, it found that wages were "all over the place." Does this mean that pay rates were set at a certain level and some were red circled at a higher level? Does a two-tier wage formula exist among the seven employees? Is there a memorandum of understanding at odds with the unambiguous contractual language? If so, none was presented in evidence. It would have been helpful – indeed crucial – for the Factfinder to have the actual pay rates of each of the seven employees. However, that document was not furnished.

Consequently, the only alternative available is to find that the Union's proposal asks for less than it already has. The recommendation will be to apply Sections 7.4 and 9.1 as written.

Section 7.6: – Uniform Allowance

Under the current Agreement, the clothing and boot allowance is \$200 per year. The City offers a \$300 increase; the Union demands a \$500 increase to establish "parity" among all three of its Units.

Other than the City's complaint that it cannot afford more increments, there seems to be no overwhelming evidence for either position. However, in the AFSCME settlement the City agreed to pay a shoe and clothing allowance of \$525 each contractual year (Article 33) and supply foul weather gear in addition (Article 35). It seems reasonable and just that this unit should receive an annual shoe and clothing allowance no less than \$525. That will be recommendation.

ARTICLE 8 - HOURS OF WORK

Building and Housing Inspectors work all over the City of Euclid, but have to return to City Hall at lunch time to clock out. The Union considers this both wasteful and an intrusion on each employee's ability to do his/her job effectively. It proposes both flexible schedules with starting times ranging from 7:00 a.m. to 8:00 a.m. and a provision that employees should not have to punch out for lunch breaks. To support these demands, it argues;

The Union seeks to provide a flexible work schedule, which would allow bargaining unit employees to provide services to City residence in the most efficient manner. Inspectors may be given assignments that have a variety of starting times. By modifying the work schedule bargaining unit employees can adjust their starting times to coincide with their assignments.

The Union's position is that employees are operating in a inefficient manner when they are required to return to City Hall and punch out in order to take a lunch break. Employees could more efficiently perform their task if they were allowed to call in their lunch breaks when they finish an assignment during a lunch period.

The City rejects both proposals and makes no counter offer.

The Union's argument is clear, sensible and impelling. The Factfinder agrees with the concept and the rationale. Nevertheless, he has no alternative but to recommend against its adoption. Forcing it upon the City would violate the most fundamental Right of Management – the right to direct employees. The City

has the authority to direct and control the on-the-clock activities of its Inspectors even if it chooses to do so inefficiently.

ARTICLE 22 – LONGEVITY PAY

This is a core issue. It has appeared in all three cases. It involves the Union's attempt to repudiate a deal that it made with the City several years ago to end longevity pay for new employees and to red circle individuals who were receiving it. The Union tried in all three factfindings to reinstitute the benefit across-the-board. The City has counter offered stipends that it calls "continuous service payments" commencing December 31, 2004 for longevity-ineligible employees. These are much smaller amounts, starting at \$200 after five years' continuous service and increasing \$50 every five years thereafter to a maximum of \$350 at twenty years' continuous employment. In exchange, and as part of its proposal, the City seeks to maximize existing longevity pay at \$7500,

In both Waste Water Treatment and Parks and Recreation, the Factfinder recommended the City's position. While it might be appropriate for the parties to consider longevity pay in the future or to renegotiate the continuous service stipends, the record establishes that neither is economically feasible now. Accordingly, the recommendation will be the same as in the two previous cases – adoption of the City's position.

ARTICLE 23 – HEALTH BENEFITS

It seems useless for the Factfinder to reword everything he said in the Waste Water Treatment controversy on this subject. Instead, he will simply copy some of what he said there into this opinion:

This is an Employer proposal to redistribute the cost of medical insurance. Euclid employees have enjoyed very good health coverage for which they have paid little compared to employees of most other municipalities in Northern Ohio. Notably, the last Agreement required them to contribute \$10 per month for single coverage, \$20 per month for family coverage. But the requirement was rescinded for the life of the 1999-2001 Agreement.

Now the City finds it financially impossible to continue support all the health-care requirements of its employees and their families. It needs shared contributions, and the outline of its proposal is:

2002 no change

2003, 2004, 2005

\$10 copay

per office visit

\$50 copay per ER visit (waived if admitted)

RX copay \$0 generic, \$12 formulary, \$20 name-brand

2004, 2005

Employee contribution-\$15 per month single, \$30 per month family

The Union is intent on retaining its health insurance plan as is, and urges the Factfinder to recommend no change. However, this is the one area where strict internal parity has been established and followed. It would be absurd for this seven-person unit to believe that it has a chance of standing alone in continuing its "cadillac" health-insurance plan. The Factfinder actually has no legitimate choice other than to recommend the City's position.

RECOMMENDATIONS

The following are the factfinding recommendations on impasse items for the 2002-2005 Collective Bargaining Agreement between the City of Euclid, Ohio and the Building and Housing Inspectors Unit represented by the City, County and Waste Paper Drivers Union, Teamsters Local 244. The parties are reminded that they have the right to mutually renegotiate, alter and amend any of these recommendations.

ARTICLE 7 - COMPENSATION

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%

Section 7.4 (Union proposal for new language): The Factfinder has discovered nothing in the Agreement or the evidence indicating that the Employer is entitled to pay any member of this Unit less than the rate for his/her classification after finishing probation. Therefore, the only recommendation is that the City comply with Sections 7.4 and 9.1 as they are written.

Section 7.6: Each employee in the Bargaining Unit shall receive a boot/shoe/clothing allowance of \$525 in each year of the contract, to be paid no later than February 28 of that year.

ARTICLE 8 - HOURS OF WORK (Union proposals for new language):

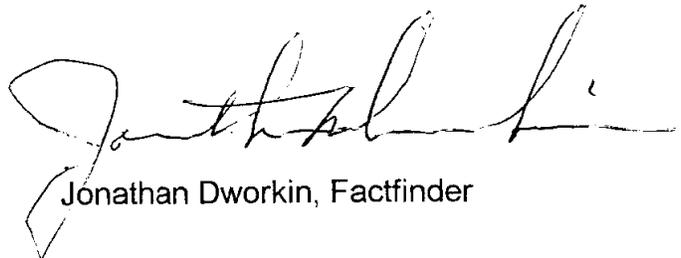
For the reasons expressed in the opinion, the City's positions on these items are recommended.

ARTICLE 22 -- LONGEVITY PAY: The Factfinder recommends AGAINST the Union's request to delete Section 22.2 from the Agreement. That provision should be carried forward, but the City's counter offer is recommended. That means that employees who are not red-circled under Section 22.2 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 premium shares unless and until employees of every other City bargaining unit are required to make such payments.

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These factfinding recommendations were issued at Lorain County, Ohio, December 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 Euclid, Ohio Building and Housing Inspectors, members 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