

2002 NOV -5 A 10: 16

**IN THE MATTER OF FACT-FINDING  
BETWEEN**

|                                      |   |                                |
|--------------------------------------|---|--------------------------------|
| <b>CITY OF NORTH ROYALTON</b>        | ) | <b>CASE NO. 01-MED-10-1017</b> |
|                                      | ) |                                |
|                                      | ) |                                |
| <b>AND</b>                           | ) |                                |
|                                      | ) | <b><u>FINDINGS</u></b>         |
|                                      | ) | <b>AND</b>                     |
| <b>OHIO COUNCIL 8, LOCAL 3410</b>    | ) | <b><u>RECOMMENDATIONS</u></b>  |
| <b>AMERICAN FEDERATION OF</b>        | ) |                                |
| <b>STATE, COUNTY &amp; MUNICIPAL</b> | ) |                                |
| <b>EMPLOYEES, AFL-CIO</b>            | ) |                                |

**JAMES M. MANCINI, FACT-FINDER**

**APPEARANCES:**

**FOR THE UNION**

**John J. Filak**

**FOR THE CITY**

**James A. Budzik, Esq.**

## **SUBMISSION**

This matter concerns fact-finding proceedings between the City of North Royalton (hereinafter referred to as the Employer or City) and the American Federation of State, County and Municipal Employees, Ohio Council 8, Local 3410 (hereinafter referred to as the Union or AFSCME). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding hearing was held on October 3, 2002.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceedings, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit involved herein consists of employees in the Service, Waste Water, Building and Administrative Departments. There are approximately seventy employees in the unit.

This fact-finder in rendering the following findings of fact and recommendations of the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). This fact-finder has also taken into consideration all reliable evidence presented. Therefore, the following recommendations are hereby submitted on the issues at impasse.

## **1. VACANCIES AND JOB POSTINGS**

The City proposes to delete the current Section 17.09 provision relating to bidding on refuse routes. The Union's position is to retain current language. The current provision allows Service Department employees to bid annually on garbage, recycling and yard waste routes by seniority. Routes in which no employee bids are filled by the least senior employee.

The City contends that it has the right to assign employees to positions in order to achieve optimum service in the department. According to the City, there are instances where the most senior employee is not best suited for the job involved. In those cases, the City must spend a considerable amount of time and resources to make the change that is necessary. In order to avoid the procedural difficulties, the City maintains that it would be appropriate to delete the current 17.09 provision.

The Union contends that the current provision which allows for annual bidding by seniority for refuse routes should be retained. The provision was incorporated into the parties' Agreement in order to avoid favoritism exhibited by management. In the past, employees have been punished by being given undesirable assignments. The Union maintains that there was no justification established by the City for deleting the contractual provision.

ANALYSIS – This fact-finder has considered the various arguments presented with reference to the annual bidding currently provided for refuse routes. This fact-finder has determined that it would be appropriate to retain current language. There was

insufficient basis established by the City for the deletion of Section 17.09. This fact-finder would agree with the Union that the current provision which is based upon seniority presents a fair and reasonable method for the bidding on refuse routes.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the current provision allowing for bidding based upon seniority on garbage, recycling and yard waste routes be retained.

### **VACANCIES AND JOB POSTINGS**

**17.09 Bidding on Refuse Routes – Current language, no change.**

## **2. SICK LEAVE ACCRUAL AND CASHOUT**

The Union proposes to retain the current provision which allows an employee to cash out one-third of accumulated unused sick leave at retirement to a maximum of 400 hours. However, the Union would increase the maximum number of hours that would be paid out upon retirement to 650 hours.

The City proposes to modify the current provision by allowing an annual cash out of one-third of accumulated unused sick leave on an annual basis. In addition, an employee will have one-third carried over to be used or subject to the retirement buyout. The City also proposes to increase the maximum to 650 hours at retirement.

The Employer contends that its sick leave buyout proposal contains the same language that is found in four other Collective Bargaining Agreements covering other employees in the City. The City argues that the pattern established with respect to this issue should be followed here. The City also notes that its proposal provides a greater benefit to the bargaining unit employees than the existing agreement.

The Union contends that the City's proposal runs contrary to the accepted purposes of sick leave and penalizes good employees. It harms diligent employees who have saved their sick leave by causing them to forfeit one-third of the new sick leave which they earn each year. While it is true that the Employer's proposal provides for a higher rate of pay out upon retirement, it slows the rate at which employees may accrue sick leave towards that pay out. It will also mean that employees who suffer serious sickness or injury will have less sick leave available to protect them. The Union also

disputes the City's claim that all other employees have a similar provision as proposed herein with respect to sick leave accrual and cash out.

ANALYSIS – Upon review of the positions and arguments of the parties, this fact-finder has determined that the City's proposed change for sick leave accrual and cash out should be adopted and incorporated into the parties' Agreement. First, it was shown that four other groups of employees subject to a Collective Bargaining Agreement have agreed to include the same as proposed by the City herein. That is, the agreements covering the patrolmen, sergeants, dispatchers, as well as the corrections officers represented by AFSCME all contain the same sick leave accrual and cash out provision recommended herein. In effect, a pattern has been established with respect to this issue which should be followed in the instant case.

In addition, it was shown that the new proposal will actual provide bargaining unit members with a greater benefit than the existing provision. The current provision permits an employee to cash out one-third of accumulated unused sick leave at retirement to a maximum of 400 hours. The new proposal raises the maximum to 650 hours at retirement and allows an annual cash out of one-third of accumulated unused sick leave. There is no such annual cash out provision currently provided. Not only will employees be able to receive one-third of their unused sick leave in cash, but it will also allow them to carry one-third forward to be used or subject to the retirement buyout.

Perhaps another way of illustrating the benefit to the bargaining unit is to discuss an employee who has not used any sick time in a given year. That employee will

accrue about 120 hours of sick leave. Under the current provision if the sick leave accrued remains unused throughout the employee's career, the cash out at retirement will be forty (40) hours. However under the new proposal, the employee will be able to cash out forty hours at the end of the year and would have forty (40) hours added to the sick time bank of which thirteen and one-third (13 1/3) hours could be used or cashed out at retirement. Under the existing provision, that thirteen and one-third (13 1/3) hours would be lost.

Therefore considering that the new proposal actually provides a greater benefit to the bargaining unit than the existing provision, this fact-finder would recommend the change discussed. Moreover, the adoption of the new provision with respect to sick leave accrual and cash out would follow the pattern which has been set in four other bargaining agreements in the City. For these reasons, the new contractual language found under Section 21.11 should be included in the parties' Agreement.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the Sick Leave Accrual and Cashout Provision be changed as follows:

#### **SICK LEAVE ACCRUAL AND CASHOUT**

##### **Section 21.11 – Shall be amended to read as follows:**

Each employee who has accumulated in excess of nine hundred (900) sick leave hours and has not used all the sick leave hours accumulated since December 31<sup>st</sup> of the previous year may receive payment for the unused sick

leave accumulated during that year to the ratio of one (1) hour pay for each three (3) sick leave hours (one-third (1/3) of sick leave accrual for that year) and one (1) hour for each three (3) sick leave hours (one-third (1/3) of sick leave accrual for that year) will be added to the member's total accumulated sick leave. The eligible employee who has met the threshold amount of sick leave accumulation (ninety (90) days) may, at his option, elect not to take the cash option but may continue to accumulate two-thirds (2/3) of his accrued sick leave for that calendar year. One-third (1/3) of the annual unused sick leave shall be forfeited to the City each year upon the accrual of the threshold amount. The option to cash out one-third (1/3) time or to accumulate two-thirds (2/3) must be made immediately after December 31<sup>st</sup>. Employees who opt for the cash conversion of sick leave will be paid in the first pay period in February at the prior year's rate of pay. Upon retirement of a full-time employee who has not less than ten (10) years of continuous service with the Employer and is eligible to receive payments from a state pension plan, the employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by one-half (1/2) the total number of accumulated and unused sick leave hours, earned by the employee as certified by the Finance Director, providing that such resulting number of hours to be paid shall not exceed six hundred fifty (650) hours.

### **3. GOOD ATTENDANCE BONUS**

The City proposes to delete Section 21.13 which provides for one bonus day off with pay for not using sick leave in any quarterly period. The Union proposes to retain the current language.

The City points out that while it proposes deletion of Section 21.13, it does not request that there be an elimination of a bonus for not using sick time. The City's proposal at Section 21.11 allows for the cash out for unused sick leave on an annual basis. Under the proposal, the employees would be paid cash for unused sick leave instead of time off.

The Union points out that the provision providing for an attendance bonus for employees not using sick leave has been in each one of the parties' agreements dating back to 1988. It has been an effective measure for reducing sick leave and rewarding good attendance. The Union argues that the elimination of the provision would amount to a substantial loss for the bargaining unit. It would in effect discourage good attendance and the saving of sick leave by employees. Instead it would encourage sick leave abuse.

ANALYSIS – This fact-finder has determined that it would be appropriate to recommend the elimination of the good attendance bonus day as part of the overall change with respect to sick leave accrual and cash out. That is, under Section 21.11 as previously discussed, employees under the new recommended proposal therein would be

allowed to cash out unused sick leave on an annual basis. In effect, employees will receive a bonus in terms of the annual cash out for not using sick time.

The Union is correct in pointing out that under the proposal employees will no longer be given time off for not using sick leave. However, it was shown that bargaining unit members currently receive significant time off. There is ample vacation, holiday and personal time available to the employees to cover their needs for time off as the case may be. Once again, it should be reemphasized that the new sick leave accrual and cash out provision which incorporates an annual cash out of accumulated unused sick leave is the same provision as that found in four other Collective Bargaining Agreements in the City. It is recommended that the pattern established with respect to this issue should be followed in this case.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the Sick Leave Attendance Bonus Provision found under Section 21.13 of the current Agreement be deleted for the reasons indicated.

### **SICK LEAVE ATTENDANCE BONUS**

**Section 21.13 – Bonus Day off -Shall be deleted.**

#### **4. HOLIDAY CARRYOVER**

The Employer proposes a new provision which would provide that with the exception of the four personal days, all other holidays not taken off shall be paid for in the first pay period in December. The Union takes the position that there should be no new provision but rather the current practice should be retained. The City's policy has been to allow the carryover of all unused holiday and personal days.

The City maintains that its proposal will not lessen the current employee benefit on this issue. Employees simply would receive cash for all unused holiday time in December of each year rather than at separation. This will allow the City the opportunity to budget its resources more efficiently. There simply is no need to bank time off under the existing agreement.

The Union points out that employees have been able to carryover unused holidays including personal days since the inception of the bargaining relationship between the parties. Allowing employees to do so has resulted in fewer employees taking time off. Employees have benefited by being able to use their carryover days at more desirable times or by cashing them upon retirement.

ANALYSIS – This fact-finder has determined that there was insufficient basis established by the City for its new proposal on the holiday carryover issue. It was shown that since the inception of the bargaining relationship between the parties, employees have been able to carryover unused holidays including personal days. Maintaining the current policy with respect to allowing holiday carryover will have minimal cost impact

upon the City. There simply was no showing made that there is a need for changing the current policy with respect to holiday carryover.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that there be no new Holiday Carryover Provision as proposed by the City. That is, the current policy regarding unused holiday and personal days carryover is to be maintained.

**HOLIDAY CARRYOVER – No new contractual provision as proposed by the City. Current policy allowing for unused holiday and personal days carryover shall be retained.**

## **5. OVERTIME EQUALIZATION**

The City proposes to replace the current language found in Section 33.02 and to add a new Section 33.04 to the Agreement. Basically under Section 33.02, the City proposes that employees be required to carry pagers so that they can be contacted to work overtime in emergency situations. Like the current provision, if an insufficient number of employees accept overtime, the Employer may mandate the least senior employee to work. Under new Section 33.04, the City's proposal is to allow for disciplinary action to be taken against an employee who fails to respond to a pager call out. The Union takes the position that current Section 33.02 be retained and that there be no new Section 33.04.

The City maintains that the procedures which it proposes under Section 33.02 for overtime equalization would make it easier to contact either those employees who choose overtime or the employees who are to be ordered to work overtime due to their lack of seniority. The City claimed that there have been occasions in the past when it has taken too long to contact employees to work overtime. As a result, it would only be appropriate to require employees to carry pagers so that they can be contacted in emergency situations. Moreover, the City argues that it must have the right to discipline employees for insubordination if they fail to respond to a pager call to work overtime.

The Union argues that the change sought by the City is not warranted. The use of pagers would place an undue burden on an employee's ability to enjoy their off duty time. The Union disputes the City's claim that there have been problems in the past in getting a sufficient number of employees to work overtime. The City's proposal also is

## RECOMMENDATION

It is the recommendation of this fact-finder that Section 33.02 with respect to Overtime Equalization be replaced with the following language. It is also recommended that a new Section 33.04 be added to this provision.

### OVERTIME EQUALIZATION

**Section 33.02** All Service Department employees shall be subject to overtime call outs as follows:

Employees who are carrying pagers by classification for that week shall be called and must report to the call out. If more employees are needed, the Employer shall call remaining employees beginning with the most senior in each classification. These employees may refuse, but if an insufficient number accept, the Employer may mandate the least senior employees to work. There shall be no equalization of overtime hours for Service Department employees.

For the purpose of this provision, the following classifications shall be required to carry pagers for a one (1) week period during the winter shift and other times of the year. The Employer shall first seek volunteers from each classification, and Mechanics may volunteer to fill the quota assigned to Laborers I or II. If an insufficient number of employees volunteer, the Employer shall assign pagers to the least senior employees in each classification. If more than enough employees volunteer, the most senior shall be given the pagers.

Winter Shift:

Laborer III (and Motor Equipment Operator)

First shift - 1 employee  
Second shift - 1 employee  
Third shift - 1 employee

Laborer II

- First shift - 3 employees
- Second shift - 3 employees
- Third shift - 1 employee

Laborer I

Fill in as required by Employer

Any employee required to carry a pager shall be obligated to perform overtime work over his normal regularly scheduled shift.

Other times during the year: (6 employees as follows):

- Laborer III (MEO) - 1 employee
- Laborer II - 3 employees
- Laborer I - 2 employees

Employees required to carry pagers for a week may trade such pager assignment (or any portion) with another employee in the same classification (or higher, with Mechanics being able to fill Laborer I or Laborer II) with prior employee notification (at least 8 hours where practicable) and approval of the supervisor. Approval shall not be unreasonably denied.

**Section 33.04** – Add new section as follows:

Any Service Department employee who is assigned a pager or has been approved for a trade of a pager assignment and who fails to respond to a pager call out shall be subject to disciplinary action for insubordination.

## **6. WAGES/RETROACTIVITY**

The Union proposes that effective January 1, 2002 there should be an increase in all steps of the wage rates by \$1.15 per hour. In the final two years of the Agreement, the Union proposes wage increases of 5% in each year. The City proposes a 3% increase in the first year of the Agreement with no retroactivity. For the second and third years of the Agreement, the City proposes additional 3% increases.

The Union maintains that its wage proposal is more in line with the increases provided to other City employees. The Union notes that fire fighters received wage increases of 4%, 4.25% and 3.75% over the term of their agreement. Likewise, the patrolmen, dispatchers and corrections officers received across the board increases of 4% in each year of their agreement. It was also pointed out that non-union employees as well as those in the other bargaining units receive higher pay than members of the unit here. The Union further argues that first year wage increases should be retroactive to January 1, 2002. There is no justification for the City's position which is that there be no retroactivity with respect to first year wage increases.

The City contends that its wage proposal is reasonable given its financial resources. The City produced evidence which indicated that its income tax revenue has declined in the current year from 2001. At the time of the hearing, it was shown that income tax receipts were running approximately \$220,000 below that which the City received during the comparable period of time in the previous year. The City points out that there is no separate operating levy here as there is with respect to the police and

fire departments which could be used to offset the cost of wage increases. The City emphasized that the bargaining unit rejected a proposed tentative agreement and as a result there should not be any retroactive wage increase provided to them in the first year of the Agreement. Moreover, there are now financial constraints which do not allow for retroactive wage increases.

ANALYSIS – This fact-finder has determined that it would be appropriate to provide for 4% wage increases in each year of the proposed Agreement. Such increases would be the same as that provided to employees in the dispatchers and police patrolmen’s bargaining units. The fire fighters also received raises which average out over their three year agreement to 4% per year.

This fact-finder has determined that the City has the ability to finance the recommended 4% per year wage increases. According to the Director of Finance, Karen Fegan, each 1% increase equates to approximately an additional cost to the City of \$23,200 for the AFSCME bargaining unit. In effect, this fact-finder is recommending an additional 1% increase beyond that proposed by the City itself. It should be reiterated that the City’s proposal was for 3% wage increases in each year of the Agreement. It is apparent that the City can afford the additional cost associated with the recommended wage increases for the bargaining unit here.

However considering the City’s financial constraints, this fact-finder must reject the Union’s request for retroactive increases in the first year of the Agreement. It was established through the testimony of the City’s Director of Finance that there has

been a significant decline in income tax revenue in the current year. This has created serious financial difficulties for the City. As the Employer points out, unlike the police and fire departments where there are operating levies to offset wage increases for those units, there is no such separate levy in existence for the department here to assist the City in paying for the wage increases which are being recommended. Due to the budgetary constraints facing the City because of the significant decline in income tax revenue, this fact-finder finds that it would be reasonable to provide that first year wage increases be effective on the date of the execution of the new Agreement.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that with respect to Wages there be 4% increases in each year of the Agreement with no first year retroactivity.

#### **WAGES**

**Effective upon the date of execution of the Agreement – Increase all steps of all wage rates by four percent (4%).**

**Effective January 1, 2003 – Increase all steps of all wage rates by four percent (4%).**

**Effective January 1, 2004 – Increase all steps of all wage rates by four percent (4%).**

ATTACHMENT A

38.01 - 38.05 INSURANCE

Replace existing sections with the following to reflect current coverage:

The Employer shall provide each employee with either individual or family coverage, as appropriate, with the existing fully paid hospitalization and dental coverage selected by the Employer. The Employer shall have the right to change insurance carriers, and/or plan coverage or limitations, providing the insurance coverage is comparable to the existing coverage.

In order to be eligible for health insurance savings, employees must participate with health practitioners and hospitals within the current network or referable within the network except in cases of emergency or in cases where the health procedure cannot be conducted within network hospitals or by network physicians. Further, insurance coverage shall be subject to the following:

- (a) All first dollar coverage shall continue to be abolished and all employees shall be subject to the co-pays and deductibles set forth in the plan limitations/schedule of benefits; deductibles for out of network not to exceed two hundred (\$200.00) dollars per employee or four hundred (\$400.00) dollars per family;
- (b) Employees who utilize in network providers shall be subject to a maximum out-of-pocket expense of five hundred (\$500.00) dollars per employee or one thousand (\$1,000.00) dollars per family. Employees who utilize out-of-network providers shall be subject to a maximum out-of-pocket expense of one thousand (\$1,000.00) dollars per employee or two thousand (\$2,000.00) dollars per family;
- (c) Employees who elect health practitioners or hospitals outside of the network shall be responsible for twenty (20%) percent of all costs and the Employer shall pay the remaining eighty (80%) percent of such costs subject to division (b), above;
- (d) As soon as practicable, the prescription coverage shall be a managed care plan and co-pays shall be subject to the following:
  - i. If generic drugs are available and the employee chooses such generic drugs, the prescription co-pay shall be five (\$5.00) dollars;
  - ii. Name brand drugs, whether chosen by the employee or are the only drugs available or written by the physician as dispense only as prescribed, shall have a co-pay of ten (\$10.00) dollars.

38.02 The Employer shall provide life insurance in the amount of fifteen thousand (\$15,000.00) dollars for each employee.

ATTACHMENT A cont.

- 38.03 The Employer will provide vision care, which will include or reimburse for an eye examination, one pair of eye glasses or contact lenses for each covered individual and dependent (under the family plan) within policy limits. The Employer reserves the right, in its discretion, to change carriers or to self insure providing the vision care coverage is comparable.
- 38.04 The Employer shall continue to provide liability insurance in the present amount, providing such insurance continues to be available.
- 38.05 The dental coverage shall include a deductible of Fifty Dollars (\$50.00) per employee or One Hundred Fifty Dollars (\$150.00) maximum for family. The annual maximum benefit per covered individual will be \$1,500.00. Orthodontia shall be subject to plan limitations.

## **8. WORK RULE**

The City proposes that discipline points remain in effect for a twelve-month rolling period from the date on which they are imposed upon the employee. The Union proposes to retain the current language which states that disciplinary points remain in effect only for the calendar year which they are imposed. The City maintains that the “rolling period” is consistent with normal expungement periods found in other agreements. The Union contends that there is no need for a change because there has been very little disciplinary action taken against members of the bargaining unit.

ANALYSIS – This fact-finder has determined that it would be reasonable to adopt a twelve-month rolling year for retention of disciplinary points. As the City correctly points out, the “rolling period” for retention of discipline is commonly found in other public sector contracts. This fact-finder finds therefore that the parties’ Agreement should include a provision whereby disciplinary points are to remain in effect for a twelve-month rolling period from the date on which they are imposed upon the employee.

## **RECOMMENDATION**

It is the recommendation of this fact-finder that a twelve-month rolling period be adopted for retention of disciplinary points under the Work Rule Provision.

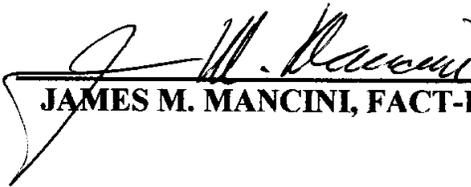
## **WORK RULE**

**Disciplinary points under the Work Rules shall remain current for a twelve-month rolling year.**

## **CONCLUSION**

This fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration. Further, this fact-finder incorporates all other tentative agreements previously reached by the parties and recommends that they be included in the parties' final Agreement.

**OCTOBER 31, 2002**

  
**JAMES M. MANCINI, FACT-FINDER**

**JAMES M. MANCINI**  
**ATTORNEY AT LAW - ARBITRATOR**  
JEFFERSON CENTRE - SUITE 306  
5001 MAYFIELD ROAD  
LYNDHURST, OHIO 44124  
(216) 382-9150 Fax (216) 382-9152

**STATE EMPLOYMENT  
RELATIONS BOARD**

2002 NOV -5 A 10:15

October 31, 2002

Dale A. Zimmer  
Administrator, Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213

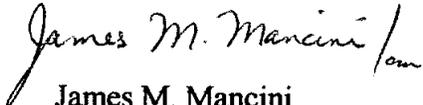
RE: Case No. 01-MED-10-1017  
City of North Royalton  
-and-  
AFSCME, Ohio Council 8  
Local 3410

Dear Mr. Zimmer:

Enclosed herewith is my fact-finder's Findings and Recommendations in the above referred to matter. I have also enclosed my fee statement along with the Services Contract.

Thank you.

Very truly yours,

  
James M. Mancini

JMM:em  
Enclosures