

I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on November 29, 2002, pursuant to Ohio Administrative Code Rule 4117-9-05(D). The parties mutually agreed to extend the fact-finding period as provided in Ohio Administrative Code Rule 4117-9-05(G). The parties are the Municipal Foremen and Laborers' Union Local 1099 (Union) and the City of Bedford Heights (City). Bedford Heights is a city of approximately eleven thousand (11,000) residents on the southeast side of Cuyahoga County covering approximately four (4) square miles.

The fact-finding involves the City and employees of its Department of Public Works, Streets and Service Division, and Wastewater Division performing general labor, semi-skilled labor and skilled labor, para-professional and operational supervisory tasks for the City. The bargaining unit is comprised of forty-three (43) individuals. The unit is represented by the Municipal Foremen and Laborers' Union Local 1099. The parties have had a collective bargaining relationship for a number of years.

Prior to the fact-finding, the parties engaged in bargaining. However, this bargaining was the last of three (3) bargaining units of City employees. The City has collective bargaining relationships with its Police Officers and Fire Fighters. The City negotiated agreements with these units in 2001 and 2002, respectively. The Police Officers received increases of three and one-half, four, and four percent (3.5%, 4%, and 4%) in 2001, 2002, and 2003, while the Fire Fighters received four, four, and three and one-half percent (4%, 4%, and 3.5%) in 2002, 2003, and 2004. In late 2002, though, the City learned one of its largest employers was moving to another city, leading to the loss of approximately five hundred thousand dollars (\$500,000) a year in payroll taxes.

II. THE HEARING

The fact-finding hearing was held on July 16, 2003 at the Bedford Heights City Hall. The parties provided their position statements by July 15, 2003. The hearing began at 11:00 a.m and adjourned at 2:00 p.m. The parties attended, introduced evidence, and presented their positions regarding the issues at impasse. The parties introduced the following exhibits into evidence:

Union Exhibits

- A. Extension and Retroactivity Agreement
- B. April 8, 2003 letter from Paul M. Wells Jr., Local 1099 Business Manager, to Marc J. Bloch, Attorney for the City, re bargaining proposals.
- C. June 5, 2003 facsimile from Marc J. Bloch to Paul M. Wells Jr. re negotiations with the City.
- D. October 1, 2002 Plain Dealer article re Sysco Headquarters moving from Bedford Heights.
- E. February 17, 2003 Plain Dealer article re Bedford Heights jail expansion.
- F. June 14, 2003 Plain Dealer article entitled "Welcome to: Bedford Heights."
- G. Undated Bedford Sun Banner article entitled "Added Incentive for Improvement."
- H. August 19, 2002 Plain Dealer article entitled "Bad Management Inflated Buyouts."
- I. SERB Clearinghouse Wage Increase Report dated July 7, 2003.
- J. SERB Clearinghouse Benchmark Report dated July 7, 2003.
- K. SERB Clearinghouse Benefits Report dated July 7, 2003.
- L. Agreement between City of Bedford Heights and International Association of Fire Fighters, Local No. 1497, effective January 1, 2002 through December 31, 2004.

M. Agreement between City of Bedford Heights and Fraternal Order of Police, Lodge #67, Bedford Heights Division, effective January 1, 2001 through December 31, 2003.

N. Agreement between City of Broadview Heights and Communications Workers of America, Local 4340 (Service and Recreation Workers), effective October 1, 2002 through September 30, 2005.

O. Agreement between City of Maple Heights and Municipal Foremen and Laborers' Union Local 1099, effective August 1, 2000 through July 31, 2003.

P. Agreement between City of Warrensville Heights and City, County and Waste Paper Drivers Union, Local 244, IBT, effective October 5, 2002 to October 4, 2005.

Q. February 2003 U.S. Department of Labor, Bureau of Labor Statistics Annual data: Consumer Price Index, U.S. city average, all items and major groups.

R. Laborers' Local #1099 Cost Profile for General Laborer (with 10 years service - with a family) in Bedford Heights.

S. May 14, 2002 letter from Dale A. Zimmer, SERB, to James Astorino and Marc J. Bloch re Case No. 01-MED-10-1008, International Association of Fire Fighters Local 1497 and City of Bedford Heights, and Findings and Recommendations of Fact-Finder James M. Mancini.

T. Chapter 133, Department of Public Works, for Bedford Heights.

City Exhibits

1. Agreement between City of Bedford Heights and Municipal Foremen and Laborers Union, Local No. 1099 (Department of Public Works), effective January 1, 2000 through December 31, 2002.

2. Cost projections for 2003 Union contract negotiations.

3. Chart of City income tax.

4. September 12, 2001 letter from Marc J. Bloch to Robert Wells re John Gilliam grievance.

5. March 15, 2000 letter from Mayor Debora A. Mallin to Robert Wells re Rudy Fajardo grievance.

6. April 8, 2003 letter from Marc J. Bloch to Mark A. Cegelka re negotiations with Local 1099.

The issues remaining at impasse for fact-finding included:

1. Call-in pay.
2. Lunch and rest period.
3. Salaries and other compensation.
4. Temporary transfers.
5. Lead employees.
6. Shift differential.
7. Snow crew.
8. Cell phone or pager allowance.
9. Service maintenance/pump station crew.
10. Prescription glasses.
11. Shoe allowance.
12. Vacation carry over.
13. Selection of vacations.
14. Holidays.
15. Increase in education allowance.
16. Reimbursement of education expenses.
17. Tool allowance.
18. Reclassification of John Gilliam.
19. Reclassification of Rodolfo Fajardo.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The 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:

(4) The lawful authority of the public employer;

(5) Any stipulations of the parties;

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Issues Resolved Prior to the Hearing

During negotiations, the parties agreed to a number of issues. The Fact Finder recommends that the following changes be made to the collective bargaining agreement.

1. The duration of the agreement is to be for two (2) years, from January 1, 2003 through December 31, 2004.

2. Article XI, Hours of Work and Overtime. A new Section 6, Compensatory Time, is to be added as follows:

Employees shall be eligible to accrue compensatory time up to eighty (80) hours in lieu of overtime pay. However, such compensatory time may not be used by the employee if it causes overtime.

3. Article XI, Hours of Work and Overtime. A new Section 7, Sixteen (16) Hour Rule, is to be added as follows:

No employee shall be required to work more than sixteen (16) consecutive hours at work. After sixteen (16) hours of work, the employee should have between four (4) and eight (8) hours rest after which time he/she shall be eligible to return to work.

4. Article XIII, Salaries and Other Compensation, Section 1, Annual Base Pay.

Under Labor Grade 1, Skilled Trades and Mechanics, add Auto Mechanics Hierarchy as follows:

Auto Mechanic GRADE II

A candidate will be eligible for a Grade II mechanics position with a minimum of two (2) ASE Certifications in the Medium/Heavy Truck Series.

Auto Mechanic GRADE I

To advance to an auto mechanic Grade I position, you must attain or hold an ASE-Certified Master Medium/Heavy Truck Technician Certificate.

5. Article XIII, Salaries and Other Compensation, Section 3, Wastewater Plant

Licenses. The language of Section 3 is to be changed as follows:

Class 1 License	\$1,080.00 a year (\$ 90.00 per month)
Class 2 License	\$1,260.00 a year (\$105.00 per month)
Class 3 License	\$1,440.00 a year (\$120.00 per month)

In order to be eligible for license pay, an employee must be actively employed in a job which requires such license. Bargaining unit employees shall receive appropriate license pay for which they are eligible. (See Attachment A, Wastewater Certification Hierarchy.)

6. Article XIII, Salaries and Other Compensation, Section 4, Differentials, b.

Wastewater System Division, Shift Differential. The last sentence of the second paragraph is to be changed as follows:

Such rate will be applicable after the employee has been on the new job for more than five (5) working days.

7. Article XIII, Salaries and Other Compensation, Section 9. Subparagraphs (c) and

(d) are to be deleted, the word "and" inserted at the end of subparagraph (a), and a period inserted at the end of subparagraph (b).

8. Article XV, Vacations - Holidays, Section 3. The second sentence of Section 3 is to be deleted and replaced with the following:

The anniversary date of employment for full-time employees for the purpose of computing the amount of vacation any employee entitled to vacation credit from prior service as certified to the City of Bedford Heights by the State or other political subdivision of the State pursuant to Ohio Revised Code, General Provisions, Section 9.44, shall be computed in accordance with Subsection (a) of the City of Bedford Heights' Administrative Code, Section 157.12, regarding full-time employment, if the prior service was full-time. Effective November 19, 1996, no vacation credit shall be allowed for prior part-time service with the State or any other political subdivision of the state.

9. Article XVI, Hospitalization and Life Insurance, Section 1. A new subsection (D) is to be added as follows:

Effective January 1, 2004, there will be a \$10.00 co-pay for each office visit.

10. Article XVII, Leaves of Absence, Section 3, Funeral Leave. In the first sentence, contained within the parentheses, the terms "brother-in-law" and "sister-in-law" are to be added following the term "father-in-law." The word "and," found between the words "sister" and "grandparents" is to be deleted. Finally, the phrase "and grandparents-in-law" is to be inserted at the end of the list of terms within the parentheses, following the word "grandparents."

11. Article XXIII, Arbitration. A new Section 1 is to be added as follows:

Section 1. In a good-faith effort to preserve and enhance a more cooperative relationship, the parties agree to jointly request grievance mediation services from the State

Employment Relations Board where appropriate, prior to a grievance being advanced to arbitration. It is agreed that mediation may not be appropriate for all disputes. Grievance mediation is a voluntary process that both parties mutually agree to try to resolve a dispute through collaborative problem-solving, utilizing the services of a mediator (i.e., a third neutral party) who shall assist the parties in an attempt to negotiate a settlement agreement, provided a compromise resolution can be reached.

Current Sections 1 through 7 are to be renumbered 2 through 8.

12. All Letters of Understanding are to be deleted.

Issues Resolved during the Hearing

During the hearing, the Union withdrew a number of its bargaining proposals. These included:

1. Lunch and rest period.
2. Temporary transfers.
3. Snow crew.
4. Vacation carry over.
5. Increase in education allowance.
6. Reclassification of John Gilliam.

Additionally, the parties agreed to the following issues. The Fact Finder recommends that the following changes be made to the collective bargaining agreement.

1. Article XI, Hours of Work and Overtime, Section 4, Call-In Pay. A new paragraph is to be added at the end of Section 4 as follows:

All employees who are called in to work outside of their regular working hours shall receive three (3) hours' overtime pay in lieu of any other stipend, provided that the employee has not been absent during regular working hours on that specific day.

2. Article XV, Vacations - Holidays, Section 4, Selection of Vacations. The last two (2) sentences of Section 4 are to be deleted and replaced with the following language:

Employees may reserve two (2) weeks of their vacation for the

purpose of taking vacation on the basis of one (1) day allotments, consistent with current Divisional rules and operational requirements.

3. Article XXV, Education Assistance, Section 4. A new subsection (e) is to be added as follows:

(e) As requested by the Union, the City shall reimburse employees for reasonable overnight expenses incurred as a necessary part of educational assistance.

Unresolved Issues

Issue: Article XIII, Salaries and Other Compensation, Section 1, Annual Base Pay

Union Position: The Union seeks a four percent (4%) across-the-board increase effective January 1, 2003 and a three and one-half percent (3.5%) across-the-board increase effective January 1, 2004. (The Union also proposed, but withdrew at the hearing, that all current custodians be upgraded to Grade 3 and grandfathered at that rate.)

City Position: The City proposes a two percent (2%) across-the-board increase effective January 1, 2003 and a two and one-half percent (2.5%) across-the-board increase effective January 1, 2004.

Findings: The Union argues that the Police Officers and Fire Fighters received increases of three and one-half percent (3.5%) and four percent (4%) in their most recent agreements. Therefore, these bargaining unit employees should receive the same increases. The Union introduced comparables, showing that workers in laborer, wastewater plant operator, and equipment operator positions in cities such as Avon, Bay Village, Berea, and Richmond Heights received four percent (4%) increases in 2003. It introduced other information as to comparables, showing that the average salary for

custodians and equipment operators in Bedford Heights are below average.¹ However, these same comparables show that the average salary for lab technicians² and laborers in Bedford Heights are greater than the average of the comparables. Finally, the Union also introduced evidence of increases given by other cities to various non-safety force, service workers. This included Broadview Heights giving three percent (3%) and four percent (4%) increases to its service workers in 2003 and 2004, respectively, Maple Height providing a three and one-half percent (3.5%) increase³ in 2002, and Warrensville Heights giving four and one-quarter percent (4.25%) increases in 2003 and 2004.

The City argues that, while its Police Officers and Fire Fighters received three and one-half or four percent (3.5% or 4%) increases, the City's financial situation has changed since those agreements were negotiated. Specifically, late last year, one of the City's largest employers, Sysco Food Services, announced it was moving its headquarters out of Bedford Heights. The move will take place in 2004. This will result in a loss of six hundred (600) jobs and a payroll of thirty million dollars (\$30,000,000). The consequent payroll tax loss for the City is approximately five hundred thousand dollars (\$500,000) annually. As a result, the City cannot afford the increases sought by the Union.

The Union counters that the City has already taken steps to replace the loss. It points to the City's plan to expand its jail to accept outside prisoners at a daily charge. According to the City, it may be able to increase revenue by approximately eight hundred

¹ The Union used the cities of Amherst, Avon, Berea, Mayfield Heights, and Richmond Heights as comparables. These cities have populations ranging from 8,000 to 20,000, are located in Cuyahoga County or eastern Lorain County, and have a mayoral system of government.

² Only Bedford Heights and Amherst have a lab technician classification.

³ To a bargaining unit represented by the Union.

thousand dollars (\$800,000) per year. The Union contends this will offset any losses created by Sysco Food Services and other businesses leaving or scaling back.

While the Fact Finder is mindful of the economic uncertainty the City faces as a result of losing a large employer, this one fact alone does not justify the increases proposed by the City. Unfortunately, given the competition between municipalities for employers, cities face such situations continually. One of the tasks facing cities in current times is how to replace such revenue when it is lost. The City already is taking steps to replace it by expanding its jail and turn it into a money making venture. The City is to be commended for this.

However, as the Union points out, the City has taken no drastic measures normally taken by public employers to balance its budget when faced with a financial crisis. The City has not eliminated any programs or departments, deferred payments, or increased fees, fines, or taxes. There have been no layoffs or elimination of jobs or reductions of city services. The projected budget for 2003 shows no such layoffs or reductions. Furthermore, the City has continued its retirement buyout program.

Given the evidence introduced by the Union, the City's argument fails. Not only have the City's Police Officers and Fire Fighters received three and one-half or four percent (3.5% or 4%) increases, but comparable communities have negotiated increases in that same range. Additionally, while the City claims financial difficulty, there is no evidence that it has taken any measures, much less drastic ones, to remedy the situation. Finally, enlarging its jail may replace the loss caused by Sysco's leaving. The Fact Finder concludes that the bargaining unit should receive a four percent (4%) across-the-board increase effective January 1, 2003 and a three and one-half percent (3.5%) across-the-

board increase effective January 1, 2004.

Recommendation: The Fact Finder recommends that Article XIII be amended to reflect a four percent (4%) increase in all salaries effective January 1, 2003 and a three and one-half percent (3.5%) increase in all salaries effective January 1, 2004.

Issue: Article XIII, Salaries and Other Compensation, Section 4, Differentials, Paragraph a., Streets and Service Division

Union Position: The Union seeks an increase of ten cents (\$.10) per hour in the differential paid to two (2) leadmen in the Streets and Service Division. This would increase the differential from twenty cents (\$.20) to thirty cents (\$.30).

City Position: The City objects to the increase and proposes continuing the differential at twenty cents (\$.20) per hour.

Findings: The parties introduced very little information regarding the differential paid to leadmen. The comparables introduced by the Union provide no information on this issue. The City introduced calculations showing that nine (9) lead employees receive the differential. An additional ten cents (\$.10) per hour for these nine (9) employees paid over the two thousand eighty (2080) hour work year would increase the City's costs by one thousand eight hundred seventy-two dollars (\$1,872) each year. Given the City's loss of tax revenues, any additional costs place additional burdens upon it.

With the scarcity of evidence on this issue, the Fact Finder is at a disadvantage. Information that would have been helpful includes when the last increase in the differential was negotiated, how much the last increase was, other cities that pay a differential to lead employees, and the amount of differentials paid by other cities. Without this, the Fact

Finder can only base his recommendation on the evidence introduced by the parties. That is, looking to the history of these current negotiations and the entire package already agreed to and proposed, is the increase in the differential warranted?

Reviewing the proposals already agreed to and those at issue, the Union has received a number of concessions from the City. However, most of these are non-economic. The major exception is the parties agreed to allow employees to accumulate eighty (80) hours of compensatory time. Additionally, there is one issue that will be an out-of-pocket expense to Union members – a ten dollar (\$10.00) co-pay for all office visits. Further, in an effort to reach an agreement, the Union dropped a number of economic issues during the hearing. In short, the economic package achieved by the Union is not so great as to place an undue burden on the City.

Looking at the language of Section 4, the Fact Finder concludes that no increase has been agreed upon for at least four (4) years, when the expired agreement was negotiated. A ten cents (\$.10) increase amounts to two hundred eight dollars (\$208.00) per year for each employee, not an unreasonable amount. The City's argument as to the loss in its tax base does not justify denying the increase.

Recommendation: The Fact Finder recommends that Section 4a of Article XIII be amended to reflect a ten cent (\$.10) increase in the differential paid to leadmen.

Issue: Article XIII, Salaries and Other Compensation, Section 4, Differential, Shift Differential

Union Position: The Union seeks an increase of ten cents (\$.10) per hour in the second and third shift differential. It seeks an increase for second shift employees from twenty-five

cents (\$.25) to thirty-five cents (\$.35) and for third shift employees from thirty-five cents (\$.35) to forty-five cents (\$.45).

City Position: It rejects the increase and proposes that the shift differential remain at current levels.

Findings: While there is more information as to this issue than the lead differential, again there is not a great deal of it. The comparables introduced by the Union show that, of the six (6) cities, only three (3) provide shift differentials. Amherst pays a second shift differential of twenty-five cents (\$.25) and a third shift differential of thirty cents (\$.30), while Berea pays thirty-five cents (\$.35) and forty-five cents (\$.45), respectively, and Mayfield Heights pay a differential of two percent (2%) to the second and third shifts. Based on this information, the bargaining unit is within the range of comparables. Receiving the increase requested would put the unit at the high end of the comparables.

Looking at the language of the provision, there has been no increase in the differential for several years. Allowing an increase would not be unreasonable. However, the Fact Finder has already recommended the four percent (4%) and three and one-half percent (3.5%) increases the Union seeks, as well as the differential for lead employees. Additionally, a ten cents (\$.10) per hour increase would place the bargaining unit at the high end of the comparables. Further, the Fact Finder is not unmindful of the City's argument that each increase, no matter how small, increases the total costs it must bear. Therefore, the Fact Finder concludes that, while an increase is warranted, one smaller than the increase sought by the Union is appropriate.

Recommendation: The Fact Finder recommends that Section 4 of Article XIII as to Shift

Differential be amended to reflect a five cents (\$.05) per hour increase in the differential for the second and third shift. Second shift employees should receive a shift differential of thirty cents (\$.30) and third shift employees forty cents (\$.40).

Issue: Article XIII, Salaries and Other Compensation, Section 9

Union Position: The Union seeks to add a new subsection specifying that all Service and Maintenance/Pump Station Crew employees receive one-half ($\frac{1}{2}$) hour of pay for each day on call.

City Position: The City rejects this proposal.

Findings: Section 9 of Article XIII deals with several miscellaneous issues such as snow crew employees who have a pager receiving fifty dollars (\$50.00) and the sewer crew receiving a two hundred fifty dollar (\$250.00) annual stipend. The Union seeks additional money for Service employees and the Maintenance/Pump Crew Station. It believes that requiring the employees to wear pagers constitutes compensable on-call time under the Fair Labor Standards Act. Since these employees are essentially required to be on-call daily, the Union seeks one-half hour of pay for each day on call.

The City argues that the parties have addressed this issue in Article XI dealing with overtime. The parties agreed that all employees called in to work outside of their regular working hours are to receive three hours of overtime in lieu of any other stipend, so long as an employee has not been absent during regular working hours on that specific day. (See recommended change No. 1 under Issues Resolved at the Hearing, page 9 above).

The Fact Finder concludes that the City's position is well taken. The parties

presented no evidence as to the requirements placed on these employees. While the Union is correct that restricting employees may entitle them to on-call pay, there is no evidence showing this time meets the FLSA's requirements for compensable time. Additionally, the parties have addressed this issue in dealing with call-in pay. The language agreed to regarding three (3) hours of overtime includes this proposal. In fact, the agreed upon language provides that the three (3) hours overtime pay is in lieu of other stipends. This proposal as to Service employees and Maintenance/Pump Crew Station would add another stipend and goes against the intent of the language the parties have already negotiated.

Recommendation: The Fact Finder recommends no new language be added to Article XIII, Section 9.

Issue: Article XIV, Working Clothing and Materials

Union Position: The Union seeks two separate items. First, in Section 3, it wants to add a stipend of two hundred dollars (\$200.00) for those employees who need prescription safety glasses. Second, it seeks to increase the shoe allowance in Section 4 from two hundred dollars (\$200.00) to three hundred dollars (\$300.00).

City Position: The City proposes to maintain the current contract language.

Findings: During the hearing, the Union modified its proposal. It now seeks to combine its two (2) proposals as to working clothing into one (1). It proposes to change the shoe allowance to a clothing allowance, allowing employees to purchase whatever clothing is necessary. This would include the purchase of prescription safety glasses. As under the

current language, employees would receive two hundred dollars (\$200.00) each year on or before June 30. Employees would then substantiate to the City the various items purchased.

The City has no objection to this proposal. In fact, the City had earlier proposed that the shoe allowance be changed to a clothing allowance. The real dispute as to this issue was over the increase in the allowance sought by the Union. Since the Union no longer seeks the increase, the City does not object to expanding the items that can be purchased with the allowance. Given that the parties in essence agree to the proposal, the Fact Finder concludes that the change should be made.

Recommendation: The Fact Finder recommends that the language of Article XIV, Section 4 be changed to reflect as follow: "Employees shall be eligible for a two hundred dollar (\$200.00) clothing allowance for work-related clothing as approved by the Service Director. Further, employees must provide the City with proof of purchase."

Issue: Article XV, Vacations – Holidays, Section 5, Holidays

Union Position: The Union seeks to add Columbus Day as a holiday.

City Position: The City proposes no change in the current language.

Findings: During the hearing, the Union amended its proposal. Rather than seek to add Columbus Day, it proposed that language be added to Section 5 specifying that, should legislation be passed making Columbus Day a national holiday, Columbus Day is to be added to the list of holidays in the contract. The City had no objection to this proposal.

The Fact Finder concludes that such language is to be added.

Recommendation: Section 5 of Article XV is to be amended. Immediately between the language regarding the personal day and subparagraph (A), the following language is to be added:

Should legislation be passed declaring Columbus Day a national holiday, Columbus Day will be added to the list of above holidays.

Issue: Article XXVII, Miscellaneous

Union Position: The Union seeks to add a tool allowance of three hundred dollars (\$300.00) for all mechanics and wastewater maintenance employees.

City Position: The City seeks to maintain the current contract language.

Findings: During the hearing, the Union altered its position on this issue. Instead of a tool allowance, the Union seeks to add language to the contract reflecting the current practice of the parties. Currently, employees provide their own tools, except for those needed for a special purpose. The City provides such special tools. Should an employee break one of his or her tools, the City reimburses the employee. The Fact Finder concludes that the agreement is to be changed to reflect current practice.

Recommendation: Article XXVII should be amended to add a new subparagraph 9 that reflects the parties' current practice regarding the use of tools.

Issue: Reclassification of Rodolfo Fajardo from Labor Grade 3 to Labor Grade 1

Union Position: The Union seeks to have Mr. Fajardo reclassified to a Labor Grade 1

position.

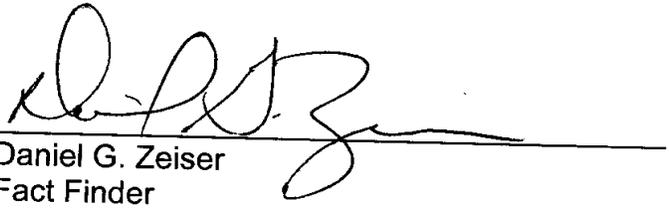
City Position: The City proposes keeping Mr. Fajardo at his current classification.

Findings: Mr. Fajardo is currently in a Labor Grade 3 position. However, he holds, and has maintained for some time, certifications that he possesses certain mechanical skills. The Union argues that, if the parties based his classification on the level of skills he possesses, he would qualify for a Labor Grade 1 position. Mr. Fajardo has even done some mechanical work for the City.

The City concedes that Mr. Fajardo has performed various mechanical tasks. However, while he holds the certificates, his skills are not at the level needed by the City. While Mr. Fajardo can perform some tasks, there are others he cannot do to the City's satisfaction. Moreover, Mr. Fajardo was disciplined and filed a grievance regarding that discipline in 2000. The parties settled the grievance by placing Mr. Fajardo in a Labor Grade 3 position and paying him at a Grade 2 salary. The parties also agreed that, if a Grade 2 position that Mr. Fajardo is qualified for were to open within the next five (5) years, he would be given first consideration for the position.

The City's position is well taken. First and foremost, Mr Fajardo is not qualified for a Labor Grade 1 position. The City has assigned him various tasks, but he has not completed them to its satisfaction. Simply put, Mr. Fajardo's skills are not at the level needed by the City. Furthermore, the parties relatively recently agreed upon his current classification as a settlement of a disciplinary grievance. Based on this evidence, the Fact Finder concludes that Mr. Fajardo should not be reclassified.

Recommendation: Mr. Fajardo is to remain in his current Labor Grade 3 classification.



Daniel G. Zeiser
Fact Finder

Dated: August 5, 2003

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STATE EMPLOYMENT
RELATIONS BOARD

2003 AUG -7 A 10: 39

August 5, 2003

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Erievue Tower
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Re: **Municipal Foreman and Laborers' Union Local 1099 and City of Bedford Heights**
Case No. 02-MED-10-0958

Dear Mr. Wells and Mr. Bloch:

Enclosed you will find my Fact Finding Report in the above matter. I trust you will find it in order. Also, enclosed is my invoice. If you have any questions, please call me.

Thank you again for selecting me as fact finder. I enjoyed working with you and hope to see you again in the future.

Very truly yours,

Daniel G. Zeiser

Enc.

Cc. Dale Zimmer



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