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**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

In the Matter of Fact-Finding Between)	<u>FINDINGS AND RECOMMENDATIONS</u>
AFSCME, OHIO)	
COUNCIL 8, LOCAL 3904)	CASE NO. 03-MED-12-1432
)	
and)	July 12, 2004
)	
CITY OF WESTLAKE)	Charles Z. Adamson, Fact-Finder

For AFSCME, Ohio Council 8, Local 3904:

James A. Ciocia, Staff Representative
1603 East 27th Street
Cleveland, Ohio 44114-4217

For the City of Westlake:

Robin Leasure, Esq.
Assistant Law Director
City of Westlake
27700 Hilliard Boulevard
Westlake, Ohio 44145

The undersigned was appointed Fact-Finder in this dispute by the State Employment Relations Board (SERB) on May 13, 2004 pursuant to Section 4117.14(C)(3) of the Ohio Revised Code in respect to a unit of Service Department employees employed by the Employer, Westlake, Ohio.

I. HEARING

After mediation the case proceeded to hearing on June 23, 2004 as to the issues where the parties had reached an impasse. The issues remaining at an impasse are the following:

1. Health Care
2. Wages
3. Performance Bonus

II. CRITERIA

In compliance with Ohio Revised Code, Section 4117.14(C)(4)(3) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest 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 issues submitted to mutually agreed upon dispute settlement procedures in the public service or in the private employment.

ISSUES AND RECOMMENDATIONS

HEALTH CARE INSURANCE

The Employer's Position

The Employer proposes to amend current contract Sections 39.02 and 39.03 of Article 39, Health Benefits and Spending Plans with Sections 39.02 and 39.03 amended to read as follows:

Prescription co-pay shall be as follows, with the employee continuing to pay the difference when a name brand for formulary is selected over an available generic or formulary.

Generic:

Year 1	\$10.00
Year 2	\$10.00
Year 3	\$10.00

Formulary (preferred):

Year 1	\$15.00
Year 2	\$15.00
Year 3	\$15.00

Name Brand:

Year 1	\$15.00
Year 2	\$20.00
Year 3	\$20.00

The eye care plan shall be as follows:

\$50.00 maximum every two (2) years for an eye examination and \$150.00 maximum every two (2) years for qualified prescription eye ware.

The annual maximum payment for qualified dental benefits is \$1,500.00 per covered person.

39.03 Employees shall be required to share in the Employer's cost for premiums under either of the plans described in Section 39.01, above. If the average monthly health/dental/vision/prescription care cost for employee exceeds a maximum amount of \$550.00, the premium sharing shall be 50% of the amount over \$550.00, not to exceed \$25.00 per month. Premium sharing would start at the first pay period the next calendar year after the average monthly health/dental/vision/prescription care costs per employee exceeds the limit.

The Employer asserts that it provides a generous health insurance package to its employees which substantially exceeds packages offered by other similar employers. It explains that its proposal will provide for the addition of a formulary tier for prescription drugs; it will also establish a maximum premium sharing co-pay not to exceed \$25.00. At present, the applicable contract provides for a \$10.00 payment for generic drugs and \$15.00 for name brand drugs. The previous premium sharing provision provided for the employee paying \$10.00 a month in third year of the existing contract.

The Employer notes the rising health costs increasing dramatically over the years. It is self-insured and employee's usage directly reflects on the Employer's costs. It points out that it has proposed this same provision to all six different bargaining units represented by five different labor organizations. According to the Employer, two collective bargaining units have accepted the above proposal. It is the Employer's intention to maintain parity in this area.

The Employer argues that the above change in benefits would result in a maximum of \$25.00 premium sharing in the event the cost per employee exceeded \$550.00. In that case, the

employee would pay 50% of the amount over \$550.00, not to exceed \$25.00.

The Union's Position

The Union essentially agrees that there should be some changes in the prescription benefits but it has proposed an annual cap on employee prescription co-pays of \$250.00 per person. In addition, it proposes that a labor management committee or similar group be established to consider expanding the Well Care benefits currently provided under the health insurance.

The Union argues that its annual cap is moderate limitation. It notes that it is aware that prescription costs have increased dramatically over the past few years, but feels that some level of predictability should be maintained as to what an employee's prescription burden should be each year.

It states that the labor management committee reviewing Well Care benefits is a proposal which would reduce the Employer's health care costs in long run; programs such as weight loss, fitness, smoke cessation, developing a list of preferred pharmacies and providing employee's families with free recreation membership would all redound to the Employer's benefit.

Findings and Recommendations

On June 16, 2004 fact-finder Daniel G. Zeiser issued findings and recommendations in respect to a unit of employees represented by the Ohio Patrolmen's Benevolent Association which included police secretaries, correction officers, the animal control officer and dispatchers (04-MED-01-0052).

In a cogent analysis Zeiser points out that the Employer maintains a generous health insurance package noting that the costs in 2003 were very low. However, based on the Employer's prior experience and the general trend, health care costs have risen. He noted

particularly that prescription costs have already risen in 2004 and that the City Hall bargaining unit has already agreed to this proposal. The unit of police officers (sergeants, lieutenants and captains) have agreed to a flat \$25.00 payment per month instead of a \$25.00 maximum.

Zeiser's analysis, conclusions and recommendations are well founded. He characterizes the Employer's plan as an excellent plan with its employees sharing only a fraction of the costs, their burden being much less than other public employees. The undersigned agrees that the Employer's proposal requiring employees to share half of any premium over \$500.00 per month to a maximum of \$25.00 is a reasonable one. The goal of seeking parity in health plan coverage among all bargaining units has always been a reasonable goal pursued by public sector employers. There is no question that there are always differences in employees' pay in various bargaining units since many factors determine employee compensation. Deciding an individual's cost of health insurance based on the individual's wages is not a rationale basis for making a recommendation in respect to health care coverage since health care is a benefit that is needed by all employees irrespective of wages or job classification.

Accordingly, in view of the above and the record as a whole, the undersigned recommends that the Employer's proposal in respect to the prescription plan be adopted. At this juncture, the Union's proposal as to a labor management committee is not recommended by the undersigned to be included in the collective bargaining agreement. There is merit to the Union's proposal in this respect. However, it is recommended that this issue should be discussed further by the parties after the collective bargaining agreement in the instant matter has been agreed upon by the Employer and the Union.

WAGES

The Employer's Position

The Employer proposal in respect to wages is as follows:

a. **WAGES.**

The Employer proposes to delete the entire Article 42 "Wages" and insert the following:

"42.01 All employees shall receive the following wages:

	Start	1 year	2 year
Crew Chief	\$18.33	\$18.33	\$18.33
Service Worker I	\$16.89	\$17.40	\$17.92
Service Worker II	\$14.83	\$15.28	\$15.74
Service Worker III**	\$12.88	\$13.26	\$13.66
Mechanic I	\$16.89	\$17.40	\$17.92
Mechanic II	\$15.45	\$15.91	\$16.39
Operator	\$16.89	\$17.40	\$17.92
Dispatcher	\$12.50	\$12.88	\$13.26

Or a minimum increase of 3.0% over current hourly rate in year 1, 3.0% in year 2, and a minimum increase of 3.0% in year 3.

** Service Worker III's start at \$12.88 per hour. After one year of service, their rate will be \$13.26 per hour. After two years, their rate will be \$13.66 per hour. After three years, they will be reclassified as Service Worker II at a minimum rate of \$14.83 per hour.

The Employer objects to the Union's revised wage proposal presented at the June 23 hearing in this matter. It argues that the Union benefitted from large percentage raises during the recently expired contract which averaged 18.96%. It believes that these pay increases rectified any inconsistencies between the pay of bargaining unit members and that no further equity adjustments are necessary. It presented a revised analysis of the Union's new wage proposal and concluded that the average wage for the new contract, including movement into the new steps,

would result in a 30.87% increase. It asserts that several employees would receive over a 40% increase during this period. The starting rate for a Service Worker III would be close to \$18.00 with every department employee receiving over \$20.00 an hour.

The Employer reasons that if the initial Union wage proposal submitted prior to the hearing in this matter provided an unacceptable 17.75% average bargaining unit raise over a three year period, the Union's new proposal of over a 30% average wage is even more unacceptable. It points out that the Employer's City Council has only authorized a 9% increase for a three year period for all employees including Directors and Assistant Directors. It is the Employer's position that parity must be maintained in the area of wages.

After characterizing the Union's new wage proposal as unrealistic and difficult to administer, the Employer argues that its proposal is a "true" step system with clarity and ease of administration. Although, according to the Employer, the steps are in 3% increments, the employees would actually benefit from an average 10.39% raise over the three years of the contract.

The Employer provided wage information obtain from SERB covering the various classifications in the unit involved herein. The municipalities from which this information was derived covered a wide geographical range including not only Cuyahoga County but also certain municipalities in Summit and Medina Counties.

The Union's Position

The Union revised its wage proposal during the Fact-Finding hearing. It proposed a general wage increase of 3.5/% effective March 1 of each year of the three year agreement and a \$.75 equity adjustment effective September of each contract year. It also proposed that the

dispatcher be added to a wage schedule to be negotiated by the parties in the future.

In its post-hearing brief to the undersigned the Union criticized the Employer's overall wage proposal of a 3% annual wage increase. It maintained that a number of municipalities referred to by the Employer were not relevant to be used as a comparisons. It also noted that many of the contractual periods for the contracts listed expired December, 2003 so that the data was not current.

The Employer's claim that the wage settlement should be consistent with the pattern established by the City Hall Association and the police captains, lieutenants and sergeants was also criticized. The Union maintained that there was no evidence of a wage inequity issue in the City Hall negotiations. Further, it asserted that the utilization of the police officer's contract was not relevant since police officers wages were higher than service department employees wages.

The Union continued to rely on its initial arguments where it categorized the Employer as "thriving outer ring suburb". It noted that the City's bond rate rating reflects its financial strength, with major rating services rating the City at AAA/a, the highest rating in the State. It noted further that home values in the City have increased dramatically over several years and that the existing commercial and industrial base has continued to grow.

The Union compared the various classifications involved herein with similar classifications in the cities of Avon, Bay Village, Fairview Park, North Olmsted, North Ridgeville and Sheffield Lake. The record reflects that the employees of the Employer in these classifications receive compensation that is substantially less than compensation received in comparable positions in these communities. The Union also noted that, based on figures from the Consumer Price Index, consumer prices rose in the first quarter of 2004, at an annual 4.4% rate.

Findings and Recommendations

As indicated above, there are six criteria that SERB requires the undersigned to consider in making findings and recommendations. One of the criteria involves comparing employees performing comparable work in a particular geographic area. Another criterion is the ability of the public employer to finance and administer a particular contract provision dealing with employees wages and/or benefits. Keeping these guidelines in mind, the undersigned obviously is not going to submit a proposal which is extremely expensive notwithstanding the fact that the Employer is a wealthy community with solid financial standing. By the same token, an equitable solution requires that employees receive wages comparable to public employees working in adjacent and nearby communities which are in good financial condition. Overall averages for Cuyahoga County may provide some guidance in making an assessment and analysis. However, municipalities with known financial problems should not be considered in this equation. Neither should municipalities in Summit and Median Counties which are not in the geographic area where the Employer is located.

At this juncture, the undersigned will recommend wage increases as set forth below. It is also concluded that past equity adjustments have served their useful purpose in the collective bargaining relationship between the parties. As a result, equity adjustments are not recommended by the undersigned in the instant contract. The Employer offered no evidence to support its position against retroactivity. Retroactivity is usually applied to wage provisions in public sector contracts. Since no rational basis exists for a finding contrary to retroactivity, retroactivity is recommended as to wages in the instant matter.

Accordingly, in view of the above and the record as a whole, the undersigned reaches the

following conclusion and makes the following recommendations in respect to wages for the three year contract involved herein:

ARTICLE XLII - WAGES

42.01

- A. The employees, including crew leader, shall receive a 3.5% wage increase effective March 1, 2004, a 3.5% wage increase effective March 1, 2005, and a 3.5% wage increase effective March 1, 2006.
- B. The wage schedule step schedule set forth in the collective bargaining agreement between the parties expiring February 28, 2004 for Crew leader, Service Worker I, Service Worker II, Service Worker III, Mechanic I, Mechanic II and Operator shall continue in existence for the duration of this agreement for the purpose of indicating the difference between the various steps in each classification as an employee accumulates service with the Employer.
- C. Wage increases are retroactive to March 1, 2004 as indicated above.
- D. The dispatcher classification shall be added to WAGES Article of this agreement which commences March 1, 2004 after the Employer and the Union have negotiated a wage schedule for this classification. Until the parties have concluded negotiations in this respect, the employee or employees in this classification will receive the wage increases set forth above for the unit involved herein. (WAGES, 42.01A).

PERFORMANCE BONUS

The Employer proposes to eliminate the current Performance Bonus system set forth in Paragraph 42 of the applicable contract and substitute the following:

42.03 Performance Bonus The Employer hereby establishes a \$15,000.00 maximum annual Service Department bonus to be distributed as follows:

- I.. The Employer shall have a time and motion study conducted by a third party. Said study shall establish the standards of productivity and efficiency expected of those individuals performing the tasks of service worker, crew leader, operator, mechanic and dispatcher. The top thirty (30) employees within the Department who consistently meet or exceed the established standards shall be awarded a \$500.00 bonus payment on March

1, 2005 and March 1, 2006.

- ii. The Director of Public Service or his designee shall be responsible to monitor employee performance to determine on a monthly basis if they have met or exceeded the established standards. Employees must meet or exceed said standards each month in order to be eligible for said bonus payment.
- iii. An employee must have attended at least one (1) year of service by January 1st of each year in order to be evaluated on the previous year. Ties resulting from the rating system shall be broken based on seniority. The bonus is not added to the employees hourly rate and is not included in the calculation of base rate for overtime purposes>”

The Employer states that subsequent to Fact-Finding in 2001, the parties negotiated a Performance Bonus system for the purpose of providing additional direct compensation to bargaining unit employees. According to the Employer, at the time it was experiencing difficulty with overtime acceptance, attendance and tardiness. As a result, the bonus program was instituted in an attempt to improve these areas. However, the Employer argues that the bonus program was never really a performance bonus.

According to the Employer its new proposal will reward employees who out perform their fellow employees. It asserts that employees who work for the government get paid regardless of their effort or productivity. Consequently, it is difficult to reward truly dedicated employees whose work conforms to a higher standard of performance and efficiency. It argues that performance bonuses and a step system based on an employee merely showing up at work encourages and rewards mediocre work product and poor employee morale.

The Employer indicates that the Union’s proposal to eliminate the sixteen person limit on the existing bonus program is unnecessary since during the last two years only ten and thirteen employees were eligible for performance bonuses. The Employer also states that there will be no

retroactivity for performance bonuses in accordance with its no retroactivity proposal in respect to pay increases.

The Union's Position

The Union's basic position is that the current performance bonus system should be continued in the new contract because it has worked successfully since it was instituted under the expired collective bargaining agreement three years ago. It emphasizes that since the bonus implementation employees' response to the Employer's request for emergency overtime has substantially improved. It maintains that with the addition of changes proposed by the Union the performance bonus system could be even better.

According to the Union's analysis the Employer seeks to substitute the current eligibility standards for bonuses, which it characterizes as straight forward and concrete, with "...highly subjective and undefined standards open to a multitude of interpretations". The criteria proposed by Employer, according to the Union, are vague and open to potential for abuse and unfairness.

The Union also criticizes the Employer's time-motion study proposal which it believes will be apparently conducted by an outside contractor retained and paid for by the Employer. Further, the Union notes that the Employer has not explained how the studies will be utilized.

Mention is made of the Employer's reference during current collective bargaining negotiations that it would like to compare the Employer's employees with private contractors on cement work and brush removal jobs. It maintains that this type of comparison is not fair and equitable where both jobs, the private and the public, are evaluated using completion time and job costs. In addition, factors such as wages, insurance costs, pension costs and other benefits would be factored in by the analyst. The crew ending up with the most favorable would receive the

work in the future.

According to the Union this is a patently unfair method of comparison since the bargaining unit employees are required to be competent in several areas with their jobs changing from week-to-week; in the private sector, companies specializing in tree removal, landscaping or other activities specialize in one field. The Union further notes that a contractor competing for the job would use his best employees and would have more control over all factors as to the project completion than a crew employed by the Employer. An example was given of a private cement contractor utilizing his own cement trucks while a City crew would be at the mercy of an outside cement supplier which could have a direct impact on the length of time it would take to complete a cement project.

The Union also notes that the Employer's proposal would have a deleterious effect on employee morale which has substantially improved since the last contract negotiations. The imposition of requirement that the Employer's crews compete with private contractors or perform their jobs while being viewed by a time-motion study consultant would destroy all progress in achieving the current high morale.

The Union further indicates that the Employer's proposal is without precedent in other service departments in the greater Cleveland area. It notes that the Employer has offered no evidence that anything similar to the performance bonus scheme exists elsewhere in the greater Cleveland area.

The Union concludes its argument against this proposal stating the Employer has offered no evidence that there currently is a problem with employee performance. Since the Employer has failed to prove that a performance problem exists and that the Employer's proposal will fix the

problem, the Union inquires as to an attempt to fix a problem that doesn't exist.

Findings and Recommendations

It is the recommendation of the undersigned, in view of the above and the record as a whole, that the current Performance Bonus system set forth in Article 42.30 of the expired contract continue to remain in the new three year agreement. The Employer's proposal, when examined in its entirety, is both impractical and unworkable in the public sector environment. There is not evidence in the record to indicate that the Performance Bonus system that was instituted in the last collective bargaining agreement does not work. The Employer is proposing a system based on various vague and ambiguous criteria which would be subject to a multitude of definitions. The language of the Employer's proposal has the potential to engender a large number of grievances in respect to the proposed language and its application.

Time and motion studies are appropriate in an industrial environment of plants and factories that produce product. In today's industrial plants great efficiency and productivity is achieved by the utilization of automated equipment which is run by fewer and fewer employees. A time and motion study analyst can readily assess the machines and particular production line based on the amount of production achieved per hour, or fraction thereof. A public service department where employees plow snow, cut down trees, and collect trash, among other things, is not conducive to time and motion studies used in an industrial environment. The question must be asked at this juncture - how is a time and motion study analyst going to assess productivity while the Employer's streets are plowed and salted during a raging winter snow storm? Further, the record is devoid of any evidence that such a Performance Bonus plan with time and motion studies exists in any municipality in the greater Cleveland area. As a result, there is absolutely no

basis for a valid comparison to be made using the Employer's proposal with surrounding communities with similar departments and financial standings.

Accordingly, in view of the above and the record as a whole, the Employer's proposal in respect to a Performance Bonus is not recommended. The current Performance Bonus system as set forth in 42.02 is recommended for inclusion in the new collective bargaining agreement.

ISSUES RESOLVED PRIOR TO THE HEARING

The parties agreed to several issues during collective bargaining negotiations. The undersigned recommends that the following changes be made to the collective bargaining agreement:

1) Amendments to the Grievance Procedure

Article XLVIII, Grievance Procedure: Section 48.04 is amended (**bold type**) to read as follows:

Step 1:

An employee who believes he may have a grievance shall notify **the operations manager** of the possible grievance within five (5) days of the occurrence of the facts giving rise to the grievance. The **operations manager** will schedule an informal meeting with the employee and his steward, if the steward's presence is requested by the employee. The **operations manager** and the employee, along with the employee's steward, if his presence is requested by the employee, will discuss the issues in dispute with the objective of resolving the matter informally.

If the dispute is not resolved informally, it shall be reduced to writing by the grievant and presented as a grievance to the **operations manager** within five (5) days of the informal meeting or notification of the **operations manager's** decision at Step 1, whichever is later, but not later than seven (7) days from the date of the meeting if the **operations manager** fails to give his answer within five (5) days of the meeting.

2) Longevity Payment

The parties have agreed to amend Article XLII by providing that longevity is to be

paid to the payroll closest to December 1st each year.

3) Subcontracting Notice

The parties have agreed to amend Article V, Section 5.03 to read as follows:

In the event the Employer intends to subcontract bargaining unit work, it shall give the union sixty (60) days notice (except for emergencies involving the public health, welfare and safety) and the opportunity to meet and confer. If the Union so requests, the parties shall schedule a meeting of the Labor-Management Committee.

July 12, 2004


Charles Z. Adamson, Fact-Finder