

STATE EMPLOYMENT
RELATIONS BOARD

2006 APR 10 A 10: 35

IN FACT FINDING

STATE EMPLOYMENT RELATIONS BOARD

CASE NOS. 04-MED-01-0001 & 0002

IN THE MATTER OF: *

CITY OF CLEVELAND *

EMPLOYER *

And *

INTERNATIONAL BROTHERHOOD OF *

TEAMSTERS, LOCAL NO. 244 *

UNION *

RECOMMENDATIONS OF THE FACT FINDER

I. BERNARD TROMBETTA
FACT FINDER
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Issued: April 4, 2006

I. DATE AND PLACE OF HEARING

This hearing was held in Cleveland, Ohio at the Cleveland Convention Center, 500 Lakeside Avenue on the 23rd day of February 2006.

A transcript of the proceedings was made by Fincun-Mancini Court Reporters.

II. BACKGROUND INFORMATION

a. Parties

This fact finding arises as a result of a contract impasse between the City of Cleveland, hereinafter referred to as the "City" and the City, County and Waste Paper Drivers Union, Local 244, hereinafter referred to as the "Union".

b. Fact Finder

The undersigned was selected as the Fact Finder by the parties.

c. The Units

This is a multi unit bargaining unit. There are 400 employees non-seasonal bargaining unit consisting of the full time concrete mixers, truck drivers, airport maintenance men, dog warden, street carry-all drivers, waste collection drivers, ground maintenance drivers I and II, traffic controllers, tanker truck driver, tow truck operators, tractor drivers, hostlers, street equipment maintenance specialists, street equipment maintenance leadmen, Parking Enforcement Officers.

The second unit, 73 concrete mixers, truck drivers, tractor drivers, street carry-all drivers, waste collection drivers, street equipment maintenance leadmen, ground maintenance drivers I and II, tanker truck driver, tow truck driver, and street equipment maintenance specialists are classified as seasonal employees and are covered under a separate collective bargaining agreement.

d. Background

The 2000 Census revealed that Cleveland has a current population of 478,000, a 5% decline from the previous census and now ranks as the 26th largest city in the U.S.

The City has experienced a number of positive developments (Cleveland Browns Stadium, Gateway, Jacobs Field, Quicken Arena, and soon the Steelyard Commons. Many residential areas boast of new and remodeled homes sporting values on a par with many of the suburban areas (Ohio City, Tremont, Detroit-Superior, Mill Creek and Hough). The Euclid Corridor is progressing and new developments are in the planning stages (East Bank of the Flats) that should bring in new residents and new office and retail tenants.

While the economy is improving, the City remains mired in the economic doldrums. The poverty rate is 23.2% in comparison to the state average of 11.6% and the national average of 10.2%. The unemployment rate ranks first in the State. Good jobs are still fleeing, not the City, the State, and the nation. The City is its own largest employer and among the top 5 in the County.

Moreover, the City has a disproportionately large population requiring special needs, the elderly, the young, the poor and disabled.

Upon taking office, the Campbell administration was faced with financial challenges. In 2001, some predicted as much as a \$60 million deficit. Fortunately the year ended with only a \$1 million deficit.

Wage settlements previously negotiated were honored, and health care coverage was maintained. Expenditures were slashed, departmental budgets reduced, programs delayed, and, finally, nearly 750 employees, including 260 police officers, were laid off. Some have been recalled, but many are still on the lay-off list.

The revised current budget assumed no wage increases and healthcare changes. By May, 2005 the City had reached agreement with 5,300 of its employees, many represented by other unions. Arbitrators issued awards in the cases of the patrolmen and police patrolmen.

The present year, while still challenging, is not as dreary as the 2001 financial prospects.

The present labor contract expired at the end of March in 2004. The City made a wage offer of -0%-, \$500 and 3% in the new contract with several changes to the health care program. Many

unions accepted the offer and others did not.

By 2004 new revenue streams were generating additional revenues, but the City continued to exhaust one time revenue sources, such as grants. (Tr. 24-26). By the end of 2003, the "Rainy Day Fund" was down to \$290,000. The draw down was largely spent on the costs of separating employees from service in anticipation of the layoffs anticipated for 2004.

James Gentile, the Interim Assistant Finance Director, testified that the "Rainy Day Fund" should have been around \$25 million if recommended percentages were followed. (Tr. 29). The "Rainy Day Fund" is used as a measuring stick by financial rating companies and is important to municipalities, particularly when seeking short term loans and bonds.

Layoffs allowed the City to operate within its budget and end 2004 with a balance of around \$2.9 million and an increase in the Rainy Day Fund to \$1 million, still far below the figures finance directors hold dear. This was accomplished through a combination of hiring freezes, layoffs, delayed projects and no wage increases. The following year, 2005, saw much of the same. Employment remained fairly stable, but income tax collections were flat and no new substantial revenue streams were developed. Wage increases were held to a single \$500 payment.

A small budgetary reserve balance is predicted for 2006, some \$500,000 in a \$500 million budget, some \$24.5 million less than the target used by financial administrators for the "Rainy Day Fund". Once again, the City is predicting a deficit operation. Health care costs increased by 5% to 6%, instead of the anticipated 12%, but, nevertheless an increase. (Tr. 31). Wage increases are scheduled to increase by 3%.

After reviewing the exhibits and testimony, it is clear that the City has the ability to pay for the Union proposals, but there are still employees on layoff, capital projects have been delayed, services have not increased appreciably. The ability to pay is but one of the criteria that Fact Finder is to weigh in making a recommendation (See Subsection (f) for the criteria). The City must weigh the needs of its citizens against the needs of its workforce. The City's raison d'etre is to deliver services to its citizens, and the services provided by the workers in this bargaining unit are but a few of the overall services demanded and needed by City residents.

e. Bargaining History

This is a contract renewal. The present Agreement expired on March 31, 2004.

Numerous unions affiliated as the Public Unions Council settled on a wage package calling for a freeze in the first year (2004), \$500 lump sum payment in 2005 and a 3% increase in 2006. Changes were made to the healthcare plan and those were accepted.

These units chose not to participate in the Public Utilities Council (hereinafter referred to as the PUC) and are therefore not bound by the resolutions reached therein. Further bargaining between the City and this Union, resolved many issues, but failed to reach agreement on many core issues.

The City argued that issues with direct economic or financial impact were not the proper subject of bargaining in the local negotiations. Those matters claimed by the City to be non-bargainable included uniform allowances, maintenance allowances, premium pay, longevity, plus adjustments, time off with pay, etc. (Tr. 15). The City regarded the Union demands as seeking to break the "pattern" established through the PUC. (Tr. 16).

The Fact Finder does not accept the City's position since the Union elected not to participate in the PUC and is free to bargain on all issues mentioned herein.

f. Criteria To Be Observed

The Ohio Revised Code and the Ohio Administrative Code mandate that the Fact Finder give weight to the following factors:

1. Past collectively bargained agreements between the parties;
2. Comparison of the issues between the unit members and those performing similar services in comparable areas;
3. Interest and welfare of the public;
4. Ability of the employer to finance and administer the issues proposed by the parties;
5. The effect that the adjustments (proposals) would have on the standard of public service;
6. The authority of the employer;
7. Other factors normally or traditionally taken into consideration in determining the issues submitted (voluntary bargaining, mediation, fact-finding and other impasse resolution procedures (conciliation) in public

service or private sectors. (Sec. 4117.14(G)(7)(a) through (f) Ohio Revised Code and OAC 4117.14 (G)(7)(a) through (f).

III. APPEARANCES

FOR THE CITY	POSITION
Craig Brown	Attorney for City
William J. Sweeney	Assistant Law Director
Patrick Hoban	Attorney for City
James Gentile	Interim Asst. Finance Director

FOR THE UNION	POSITION
Jarrell Williams	President, Local 244
Jeffrey Doran	Secretary-Treasurer, Local 244
Lindsay Maddox	Vice President, Local 244
Leon Robinson	Recording Secretary, Local 244
Ken Driscall	
Maria Rubio	Parking Enforcement Officer
Alfredia Livingston	Parking Enforcement Officer
Stanley Hall	Union Representative
Ramon Blevins	Airport Maintenance
John Grabowski	Union Steward

IV. WITNESSES

FOR THE CITY

NAME	POSITION
Jim Gentile	Interim Assist. Finance Director
Rich Silva	Parks & Airports
Ton Simmonds	Street Department
Fred Szabo	Commissioner, Hopkins Airport
Dennis Savas	Dep. Commissioner- Hopkins Airport
Steve Orlik	Maintenance Mgr- Hopkins Airport
William Sweeney	Assistant Law Director

FOR THE UNION

NAME	POSITION
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Jeffrey Doran	Waste Collection Driver
Lindsay Maddox	Truck Driver
Jeffrey Appleton	Airport Maintenance
John Grabowski	Airport Maintenance
Ramon Blevins	Airport Maintenance
Stanley Hall	Truck Driver
Alfredia Livingston	Parking Enforcement
Maria Rubio	Parking Enforcement

V. EXHIBITS

Each party submitted numerous exhibits. The Union also introduced comparables from the cities of Warrensville Heights, Euclid and Willoughby Hills.

A separate listing of the exhibits will not be made.

VI. ISSUES RESOLVED PRIOR TO HEARING

The following matters were either resolved between or withdrawn on the day of the hearing: 1) the Bid Procedure Side Letter pertaining to the Division of Streets employees was resolved between the parties; 2) Inequity Adjustment of \$.92 per hour for the Hostlers- as contained in Addendum III was withdrawn by the Union; 3) Inequity Adjustment of \$.24 per hour for Waste Collection Drivers- as contained in Addendum IX was withdrawn by the Union; 4) A new Subsection 9 in Addendum X pertaining to truck drivers at the Airport requiring all drivers, except EMS and fire trucks to be members of Local 244 was withdrawn by the Union. 5) A new Subsection 11 in Addendum X pertaining to bargaining unit members working at the Airport regarding the payment of compensatory time was withdrawn by the Union. 6) A new subsection 5 in Addendum XI pertaining to local members working in the Public Utilities Department requiring the City to distribute all new equipment among all stations and to assign operators on the basis of seniority was withdrawn by the Union; 7) Inequity Adjustment of \$.97 per hour for Tow Truck Drivers in the Motor Vehicle Maintenance Department as contained in Addendum XIV was withdrawn by the Union.

VII. ISSUES SUBMITTED TO FACT FINDING

According to the City's Position Statement, 9 issues were submitted for fact finding. Many of the issues involve multiple demands.

The Union's Position Statement contained 15 unnumbered issues

involving Non-Seasonal employees and 5 unnumbered issues for the Seasonal Employees. Two of those issues involved the creation of new subsections and many involved multiple requests.

The Fact Finder's observations regarding finances and the ability of the City to pay for the Union proposals will not be repeated throughout this report except to emphasis a point when necessary. The City's economic condition played a major role in formulating the following recommendations, along with, the flat revenues, lack of new revenue sources, and the delayed implementation of necessary services, projects and infrastructure improvements.

NON SEASONAL EMPLOYEES

ISSUE NO. 1

ARTICLE XXX- WAGES

City Issue No. 1
Union Issue No. 1

UNION POSITION: The Union is seeking an across the board 3% wage increase in each of the 3 years of the contract.

CITY POSITION: The City offered a wage increase of -0%- in the first year, \$500 lump sum in the second year and 3% in the third year.

DISCUSSION: While the City may have the ability to pay for the wage increase requested by the Union, the Fact Finder must weigh the impact that those increases would create upon a municipality already reeling under financial stress and upon its other employees, many of whom have settled on smaller wage increases.

The Union's wage demands are certainly not excessive, and, in many cases, may be considered to be reasonable.

But the Fact Finder must take into consideration the still reduced workforce with still laid-off employees, the flat income tax collections, the failure to develop significant new revenue streams, the continued loss of well paying jobs, the delay in making necessary improvements and the fact that other unions, representing thousands of employees have accepted the same wage offer as offered to the Union herein. The Fact Finder must then

determine whether there are factors that sets this unit apart from other units.

A typical waste collection driver makes \$17.33 per hour and stands to earn \$36,046.40 in a typical year, If he operates the front end-loader truck full time, he will earn an additional \$2,080. This is by no means an excessive wage considering the cost of living in this area, but, on the other hand, is not inconsequential, particularly in view of the other benefits paid to him.

The Fact Finder can not find any circumstances that sets these employees apart from the other municipal workers who have accepted the City's offer.

RECOMMENDATION: The Fact Finder recommends adoption of the City's wage proposal.

ISSUE NO. 2

HEALTHCARE- ARTICLE XXIV

City Issue No. 2
Union Issue No. 2

CITY POSITION: The City has offered a revised healthcare program that will require the employees to absorb a greater share of costs and premiums.

UNION POSITION: On the other hand, the Union is seeking a rollback, demanding the same coverage at no costs to the members.

DISCUSSION: The demand to rollback fails to recognize the realities of continuing of health care costs.

Employees and employers are once again faced with skyrocketing healthcare costs. The City expected increases of over 12%, but felt fortunate when they rose by only 6%. No one can predict if these increases will stop or flatten. Prescription coverage costs have risen even more dramatically that have physician and hospital costs.

Union members must recognize that this is a common problem, and employers, particularly public employers, can no longer be expected to healthcare coverage at little or no cost to the workforce. The key to the problem is to soften the impact upon the

employee as much as possible.

Public employers cannot continue to absorb the rising costs of health care without substantial contributions from the workforce. The City's offer realistically takes into consideration its obligation to continue to provide health coverage without imposing a greater burden upon its residents.

The Union did not submit a counter offer. It simply demanded a total roll-back which is not realistic. This same program has been accepted by other unions and the Union failed to prove that the City's program should not be adapted.

RECOMMENDATION: The City's offer on health care should be adopted.

ISSUE NO. 3

CIVIL SERVICE LANGUAGE (NO ARTICLE)

City Issue No. 3

CITY POSITION: The City proposes the inclusion of certain language in the Civil Service section of the agreement (Article XI?) that it maintains is required by the decision of the 8th Circuit Court of Appeals in CSEA v. Cleveland (2002 Ohio 586 (2002)).

UNION POSITION: The Union wants to maintain the current language of the contract.

DISCUSSION: The City must confirm its Civil Service policies to the decision of the Court of Appeals. If it is proven that the City's civil service policies are contrary to the decision, the City is exposed, not only to an adverse judgment, but possibly the payment of lost wages, attorney fees and a penalty for ignoring a court order. The Union did not explain its opposition to bringing the City's civil service rules in conformity with the court's decision.

RECOMMENDATION: The City's proposal is approved.

ISSUE NO. 4

ARTICLE XV, Section 2[c]- Notice of Sick Leave Use

City Issue No. 4

CITY POSITION: The City proposed the modification of Article XV by requiring notice of sick leave usage 1 hour before the scheduled starting time on the first day.

UNION POSITION: The Union desires to maintain current language.

DISCUSSION: The current language permits an employee to report sick time usage one hour after commencement of starting time on the first day of the absence. The City desires to change that provision to 1 hour before in the interests of efficiency. Though the City argues that adoption of its proposal would benefit both the City and the employee, the Fact Finder can adduce no benefit to the Union by changing current contract language nor need for such changes.

RECOMMENDATION: Maintain current contract language.

ISSUE NO. 5

SIDE LETTERS AND LETTERS OF UNDERSTANDING

City Issue No. 5

CITY POSITION: The City desires to delete, modify or incorporate into the new agreement the 8 side letters/ letters of understanding attached to the agreement.

UNION POSITION: The Union opposes the City's request.

DISCUSSION: A number of the attachments are 10 years old and have been made a part of the labor agreement for at least the last two agreements.

The Fact Finder fails to understand the Union's opposition to ridding the contract of dated materials or to incorporating into the body of the agreement currently relevant conditions. The agreement has grown increasingly difficult to understand to

someone who does not have to work with it on a daily basis.

RECOMMENDATION: The contents of still appropriate side letters/ understandings should be incorporated into the new collective bargaining agreement. Dated side letters/ understandings that are no longer appropriate should be omitted from the new agreement.

ISSUE NO 6

ADDENDUM IV- DEPARTMENT OF PUBLIC SAFETY- DOG WARDEN

City Issue No. 6

CITY POSITION: The City desires the authority to schedule the dog warden's lunch break at its discretion and have the right to modify or reduce the length of the break to 30 minutes.

UNION POSITION: The Union desires to maintain current contract language.

DISCUSSION: Presently Addendum IV contains no mention of either the length or time period for the dog warden's lunch break. The City is seeking new language to add to the Addendum.

The hearing produced some evidence that the dog wardens have been getting 1 hour for lunch, but have no specific time for taking this break.

The City's request that it be given total discretion to schedule the lunch break without parameters is unreasonable. A lunch break is just that- a lunch break and is to be taken during the period when such breaks usually occur. The length of the lunch break should be the same as that accorded other City employees, unless the dog wardens have historically been afforded a longer lunch break.

No evidence was produced to establish the length of the break and the parties should revisit the issue when arriving at the terminology of the signature contract.

in this and other similar departments. If, however, the dog warden's have historically received a 1 hour lunch break then the City should not unilaterally reduce the break to 30 minutes.

In any event the City may schedule the dog warden's lunch

break between normal lunch break hours, e.g. 11:30 a.m. and 1:30 p.m. The 2-hour window should be ample time to satisfy everyone. Staggered times within the department would permit the department to respond to an emergency without regard to the lunch break.

RECOMMENDATION: The Fact Finder recommends against the City's proposal and suggests that a staggered lunch break schedule be established for the department.

ISSUE NO. 7

ADDENDUM NO. VII- DEPARTMENT OF PARKS, RECREATION & PROPERTIES

City Issue Nos. 7(a) and 7(b)

CITY POSITION: In Issue 7(a), the City wants to modify Section 2 by requiring employees to work in less than 32 degree weather if in a heated or closed cab. In 7(b) the City desires the elimination of "plus adjustments", except for the position of Sweeper. In return the City is willing to increase the base driver rate by \$.35 per hour commencing on the first pay period following ratification of the new agreement.

UNION POSITION: The Union desires to maintain current contract language.

DISCUSSION: Once upon a time the truck equipment were either open or did not have heaters. Though never established, one would expect the equipment to be equipped with heaters or to be enclosed and heaters can be retrofitted into existing equipment.

The clause is dated and should be omitted from the new agreement. The question becomes at what point outdoor work dangerous to the health of the employee. This Fact Finder can recommend a temperature that would be just as arbitrary as the contract limitation. Obviously, no employee should be required to work outside or unprotected in temperatures that would endanger their lives or limbs. Further, the City, under its management rights, should be able to set reasonable conditions under which its employees will be expected to work free from the arbitrary restraints of the contract. If the City makes an unreasonable demand, the employees are adequately protected by the grievance procedure. A pre-determined exterior temperature at which all

outside work ceases is unreasonable.

The Union reasonably rejected the City's offer regarding the elimination of adjustments for equipment operators in return for an increase of \$.35 per hour to the base rate for all employees of the Division.

There are 244 drivers who receive adjustments of between \$.75 and \$3.80 per hour. The number of hours that these men receive an adjustment was not proven by either side. (Tr. 84-85) The offer of less than half of the lowest adjustment is an insufficient quid pro quo.

The City pointed out that the increased base rate would be subject to all across the board percentage increases. This is of no effect in such years as 2004 when no increase was given or 2005 when a lump sum payment was offered.

RECOMMENDATION: Issue 7(a): The City's request to eliminate Section 2 from the new contract is recommended.

Issue 7(b): The City's request to scrap the adjustments for some of the employees of this division in return for a \$.35 per hour increase to the base rate of all division employees is not recommended.

ISSUE NO. 8

ADDENDUM X- AIRPORT MAINTENANCE MEN

City Issues Nos. 8(a) and (b)

CITY POSITION: In Issue 8(a) the City wants to issue pagers to employees with the requirement that the employee carry it and respond at all times. In Issue 8(b) the City desires to eliminate all "plus adjustments" and increase the base rate by \$1.25 per hour for all employees in the Airport Maintenance Men.

UNION POSITION: The Union rejects both proposals.

DISCUSSION: Issue 8(a): The City wants to purchase pagers and issue them to its airport maintenance men along with the requirement

that the pagers be worn and the wearers respond to all messages. The City demanded that the employees who establish a pattern of non response shall be subject to disciplinary action.

On the one hand the City has urged support of its wage and health proposals on the basis of its financial condition, and then proposes that it will purchase pagers for its maintenance men to require a faster response time during non-shift times.

The airport has been operating for many years without pagers (Tr. 98). The Union objected to having its members be tied to the job any closer than through a telephone. The City has failed to demonstrate a need for the inclusion of the requested language.

In Issue 8(b) the City has requested the elimination of plus adjustments most of which are contained in the maize-like Addendum X which requires adding \$.60 per hour while operating certain equipment, \$1 per hour for operating a double axle (tandem?) truck, between \$3 and \$4 per hour when performing sheet metal, carpentry and plumbing jobs. Some of the employees have a base rate equal to 70% of the prevailing rate for jobs which look strikingly similar to those jobs performed by the various Laborers Unions.

The City's offer of \$1.25 per hour for all employees ignores the fact that the employees receiving adjustments for sheet metal, plumbing and carpentry work are performing skilled trades work and should receive added compensation when and for doing that work.

If employees switch jobs, their pay is going to have to reflect the different rates and the City is faced with a daunting administrative nightmare. Whether or not the bookkeeping is difficult, the system of rates, plus adjustments was created by both the Union and the City and there is no need to penalize the workers.

The Union's requests for changes to this Addendum will be addressed under a separate Issue.

RECOMMENDATION: The Fact Finder recommends retention of current contract language.

ISSUE NO. 9

ADDENDUM XII- DIVISION OF STREETS

City Issues 9(a), 9(b) and 9©

Issue 9(a) involving the Bid Procedures Side Letter was resolved between the parties prior to this hearing and no recommendation will be made regarding this issue.

CITY POSITION: In Issue 9(b) the City desired the right to issue pagers to Snow Removal Vehicle Operators and require the employee to wear the unit and respond to all pages.

In Issue 9[c] the City wanted to eliminate the "plus adjustments", and paragraph 12 premium pay in return for increasing the base pay for all Division employees by \$.50 per hour.

UNION POSITION: The Union was opposed to the suggested changes.

DISCUSSION: Briefly, neither the need for pagers nor the requirement that they be worn was established.

Also, the elimination of the adjustments and premium pay in return for increasing the base pay of all division employees by \$.50 per hour has not been proven to be an adequate quid pro quo. Employees not entitled to the adjustment may benefit, while those employees who now receive the benefit would experience a decline in earnings.

RECOMMENDATION: Neither change is recommended.

THE FOLLOWING ARE UNION ISSUES

ISSUE NO 10

ARTICLE XX- LONGEVITY

Union Issue No. 3

UNION POSITION: The Union sought a longevity increase of \$100 in each of the 5 steps.

CITY POSITION: The City opposed the increase.

DISCUSSION: An increase in longevity is a disguised increase in wages. Longevity pay is unique to public employees and at one time was an untaxed benefit, but the IRS long ago closed the loophole. The parties have bargained the rates appearing in the expired contract. Increases in longevity were not offered to other employees and while the rates may pale in comparison to other municipalities, not many municipalities are faced with the same financial crises as is the City.

RECOMMENDATION: No changes to the longevity schedule are recommended.

ISSUE NO. 11

ARTICLE XXV Section 6- PAY DAY

Union Issue No. 4

UNION POSITION: The Union seeks to modify Section 6 by reducing the number of days in which the City has to correct payroll errors in excess of \$25 from 6 working days to 3 working days.

CITY POSITION: The City desires to retain current contract language.

DISCUSSION: The current language cites significant payroll errors. The Union seeks to redefine "significant" to "in excess of \$25" and reduce the time from 6 days to 3 days.

The Union position is understandable, particularly for those employees using direct deposit of payroll checks from which monies are automatically withdrawn by prior consent, e.g. utility bills.

The City processes thousands of payroll checks each week and errors are bound to occur. The number of errors are likely small in comparison to the number of payroll checks. The requested change has no bite in the event an error is not corrected within the allotted time. The proposed change would cure nothing and increase the filing of grievances. Almost all errors would be corrected long before the matter comes on for hearing.

RECOMMENDATION: The current contract language should be retained.

ISSUE NO. 12

ADDENDUM 11- UNIFORMS

Issue No. 5

UNION POSITION: The Union is seeking a modification of the Addendum by calling for a non-prorated allowance of \$600 for uniform purchases and a \$400 allowance for uniform maintenance.

CITY POSITION: The City argued that present contract language grants uniform allowances on the basis of classifications which the change would negate. In addition, the cost of the proposal would severely impact the already fragile budget.

DISCUSSION: A uniform allowance was originally intended to offset the cost of uniforms required to be worn by many City employees, e.g. uniforms, coveralls, etc. Over the years this benefit was expanded to include uniform maintenance, i.e. washing, cleaning, etc.

Too often the benefit bears no relation to the cost of either the uniforms or the cleaning costs. If an employee wears a set of coveralls purchased at the local K-Mart, those coveralls would be ready for the washing machine at the end of the week. The public employee faces no greater exposure than an employee working for a private contractor, who receives nothing toward uniform maintenance. Further, a uniform allowance commonly bears no relationship to the cost of purchasing either a uniform or set of work clothes. No evidence of the service period was introduced. The Fact Finder, therefore, had no basis on which to make a comparison.

Also, applying the allowance, generally, to all bargaining unit members bears no relationship to the type of work, the type of clothing or the expected period of service that a particular group of employees could expect from a single set of clothes, i.e. the replacement frequency.

The allowance is adequate. No evidence of need as between different jobs was introduced.

RECOMMENDATION: The Fact Finder recommends retention of current language and practices.

ISSUE NO 13

NEW ARTICLE- HEALTH AND SAFETY

Issue No. 6

UNION POSITION: The Union seeks a new article by which an employee can refuse an order deemed to jeopardize health or cause bodily injury.

CITY POSITION: Demands that current language be retained.

DISCUSSION: This is language that does not appear in the current contract, though the Union claims that similar language was contained in the contract that expired in 1998. It apparently was eliminated through the process of collective bargaining.

The grievance procedure, if properly utilized, offers adequate protection to a worker refusing an order deemed an unnecessary risk of or injury. Inclusion of this language would create more divisiveness between management and labor.

Under the management rights clause of the contract, the City has the right to establish reasonable work rules (Art. III, Sec. 1(a)). Since this unit has been organized for a considerable period of time, it seems reasonable that the parties should have attained a level of cooperation between them. The lack of evidence as to the necessity of this clause demonstrates that the parties have achieved a reasonable working relationship.

RECOMMENDATION: The Union's request for inclusion of this language is not recommended.

ISSUE NO. 14

ADDENDUM III- HOSTLERS

Union Issues 7(a) Inequity Adjustment- Withdrawn prior to hearing
7(b) Request for Hazardous Duty Pay

UNION POSITION: The Union has demanded that hostlers be awarded hazardous duty pay if injured in the line of duty at full pay during the period of disability.

CITY POSITION: Rejects the proposal on the basis of costs and the availability of other coverages.

DISCUSSION: A hostler injured in the "line of duty" could mean an injury incurred while mucking out the stable, stepping on a tack or being kicked by an animal. The Fact Finder does not accept that an injury incurred while cleaning a stable is a hazardous duty injury. Use of the phrase "line of duty" is simply too broad and could cover every type of injury sustained in the work place.

The City provides workers compensation coverage for its employees. After the minimal waiting period, an injured employee receives his full weekly wage for a set period of time, followed by an amount equal to the State wide average.

The waiting period required by the Bureau forces the injured employee to use accumulated sick leave. At some time in the past, the parties agreed that the use of sick leave was proper for job injury leaves. It is a benefit and should be used as the parties intended.

In any event limiting such a change to hostlers ignores the injuries that non-hostlers may receive in the discharge of their duties. It is a common problem not necessarily limited to hostlers.

RECOMMENDATION: The suggested amendment to Addendum III is not recommended.

ISSUE NO. 15

ADDENDUM IV- DOG WARDEN

Union Issue Nos.	8(a)	Compensation Adjustment
	8(b)	Stray Dogs
	8[c]	Stray Animal Limitation
	8(d)	Hazardous Duty Pay
	8(e)	Inequity Adjustment

UNION POSITION: 8(a)- the Union is seeking an additional \$1.20 per hour for picking up dead animals.

8(b)- the Union is requesting 2 dog wardens to pick up stray dogs
8[c]- the Union wants the dog wardens limited to picking up only dogs and cats;

8(d)- the Union wants hazardous duty pay for any dog wardens injured "in the line of duty" and not be required to use sick time;

8(e)- the Union wants an inequity adjustment of \$1 per hour applied to the base rate when dog wardens assist in the euthanasia of animals.

CITY POSITION: The City is opposed to any changes in this Addendum.

DISCUSSION: According to the City the Waste Department picks up dead animals and not the dog wardens. Therefore there is no need to add this adjustment to the Addendum.

The dog warden job description involves exposure to animals and are trained and equipped to handle strays. If the dog warden does not desire contact with animals, he should seek a transfer to another department. There was no demonstrated need to use two dog wardens for each pick-up assignment.

The hearing produced evidence that the recent layoffs forced fewer dog wardens to do the same work as before. There was no evidence to establish this allegation. A dog warden is required to perform his regular duties during assigned hours. If the department is undermanned, then it is the obligation of the City to provide adequate staffing.

The Union's demand that the dog warden's duties be limited to dogs and cats is too broad. It seems logical that the vast bulk of a dog warden's duties involve the pick-up of stray dogs and cats. In the event that a pack of stray and/or vicious dogs is encountered, the warden need not risk injury and certainly may call for help. If the dog warden meets a rare and dangerous exotic animal, he need only to call in a trained individual. The job, if done correctly, is not inherently dangerous. The City provides workers compensation coverage and Sick Leave is available to cover most waiting times.

Exactly why the dog wardens should receive an extra \$1 per hour to assist in animal euthanasia was never made clear. If, as the City suggests, animal euthanasia is a part of the job description of a dog warden, then he should not be paid an additional \$1 per hour to perform an assigned duty. This is a demand for a wage increase and that issue has been disposed of elsewhere herein.

RECOMMENDATION: None of the Union's requested changes to this Addendum are recommended. Current

language should be retained.

ISSUE NO. 16

ADDENDUM VI- PARKING ENFORCEMENT OFFICERS

Union Issue No. 9(a) Hazardous Duty Pay Request
9(b) Vacation Time

UNION POSITION: The Union wants hazardous pay for its parking enforcement officers and the right to take vacation time in increments of not less than 1 hour or more.

CITY POSITION: The City opposes hazardous duty pay for parking enforcement officers and refuses to carve out special vacation time privileges for this small group of employees.

DISCUSSION: Once again the Union employed use of the term "in the line of duty" and once again the Fact Finder is compelled to point out that the language is far too broad. If the Union intended to request that those employees injured while performing their duties of employment be compensated at their regular rate of pay and not be required to use accumulated sick time, then it should have so asked. The Fact Finder sympathizes with the injured worker who must use sick time when injured on the job, but sick time is provided by the City to cover sickness, illness and on the job injuries. (Art. IV, Section 2(g)). The parties necessarily must have agreed upon its use under such circumstances at one time since it is a part of the collective bargaining agreement.

The Addendum does mention special vacation rights for parking enforcement officers. Vacations are governed under Article XXIII. Why they should be permitted to take vacations in increments of 1 hour was not made clear. The Addenda attached to the contract appear to have carved out little perks for segments of the local. Once these perks are given, they are difficult to remove from the agreement, and good or bad, the parties must learn to live with them. The Fact Finder is unwilling to add another perk to this overloaded contract, particularly where a special need has not been established.

RECOMMENDATION: Current contract language should be retained.

ISSUE NO. 17

ADDENDUM VII- PARKS

Union Issue 10- Inequity Adjustment

UNION POSITION: The Union is seeking an "inequity"
 adjustment of \$.22 per hour base rate
 increase for Ground Maintenance II
Drivers working in the Parks Division.

CITY POSITION: The City opposed any adjustment in the base
 rate of the ground maintenance II drivers.

DISCUSSION: While the Addendum contains adjustments for
 the operators of certain equipment, there does
 not appear to be one for ground maintenance II
drivers. The request applies to the base rate and is not simply an
equity "adjustment". If granted, the adjusted total would be
subject to all future percentage increases. There was no special
need proven that would permit these men to receive more than the
pattern settlement.

RECOMMENDATION: The requested adjustment is not
 recommended.

ISSUE NO. 18

ADDENDUM IX- WASTE COLLECTION

Union Issue No. 11(a)- Inequity Adjustment
 11(b)- Overtime Assignments (withdrawn by Union)

UNION POSITION: The Union seeks an inequity adjustment of \$.24
 per hour for Waste Collection Drivers to be
 applied to the base rate.

CITY POSITION: The City opposes the adjustment

DISCUSSION: Though characterized as an inequity adjustment, the
 request is a wage increase. The Addendum contains
 an adjustment for the operators of certain types of
equipment, it was not disclosed whether "drivers" as characterized

already receive an adjustment or this group receives only its base rate.

The request is a wage increase that exceeds the offer and the union's third year demand. It also breaks the pattern offered and accepted by other unions. The financial condition of the City does not permit it to break the pattern and, at the same time, deliver vital services to its residents.

RECOMMENDATION: The Union's request is not recommended.

ISSUE NO. 19

ADDENDUM X- AIRPORT

Union Issue Nos. 19(a)- Prevailing Rate Increase
19(b)- Specific Job Adjustments
19(c)- Truck Drivers (withdrawn by the Union)
19(d)- Inequity Adjustment
19(e)- Compensatory Time

UNION POSITION: In 19(a), the Union is seeking an increase from 70% to 100% of the Prevailing Rate for its employees performing the jobs of laborers and cement finishers as appearing in Subsection 2.

In 19(b) the Union is seeking a \$2 per hour increase for those maintenance men performing duties of welding, plumbing and carpentry and in 19(c)(new subsection) it demands an inequity adjustment of \$.78 applied against the base rate for maintenance men. Lastly in 19(e) (new subsection) the Union wants the option of taking their pay as either compensatory time at the time and one-half. The demand is not confined to overtime.

CITY POSITION: The City opposed any changes to this Addendum.

DISCUSSION: The first 3 issues are wage increase demands regardless of their characterization in the position statement. The Union claimed that the City is paying 100% of the prevailing rate to operators of the listed equipment, but produced no evidence thereof. The parties long ago agreed upon a wage rate calling for the payment of 70% of the rates paid to various construction workers such as the members of Laborers Locals 310 and 860 and Cement Finishers. As the members of those locals receive wage increases, so do the City employees performing those same jobs. When not operating the equipment, the City employees receive their regular base rate. There was no

evidence produced as to the frequency that the maintenance personnel receive the premium rate, but the parties agreed on the specific percentage and there is no evidence warranting an increase in this rate.

A \$2 per hour increase for maintenance personnel performing the work of skilled trades is also not warranted because it breaks the pattern of percentage increases. Why this group receives an hourly premium rate and not the percentage of the prevailing rate was never made clear. The parties bargained over the method by which to pay wages on this formula and that formula or method will not be changed by a fact finder recommendation without a substantial showing of inequity or unfairness.

The general inequity adjustment of \$.78 per hour is in addition to the above and would be applicable when general maintenance work is being performed rather than one of the listed jobs for which a premium adjustment is paid. That rate would be in added to the base rate with the result that the increase would exceed the 3% offer and demand.

Whether characterized as an increase in the base rate, or an equity adjustment or an inequity adjustment, a wage increase by any other name is still a wage increase. The three are demands for wage increases and they appear to be in addition to the 3% rate increase scheduled to begin April 1st.

The affected employees are year-round employees. Construction tradesmen are dependent upon the construction business as well as the weather. Many spend the winter months on unemployment.

The demand for compensatory time does not appear limited to overtime pay and may well include regular as well as overtime wages.

While overtime appears to be controlled by under Article XVIII, the City and the Traffic Controllers managed to carve out an exception in Addendum VIII. What sets this group apart is not clear, but again, this perk was the result of a mutually bargained agreement and this Fact Finder is not willing to add another exception or special perk to an already overloaded agreement where no special circumstances were proven.

RECOMMENDATION:

The Union's requests are not recommended.
Current language should be retained.

ISSUE NO. 20

ADDENDUM XI- DEPARTMENT OF PUBLIC UTILITIES

Union Issue No. 13(a) Base rate Adjustment
13(b) New Equipment Distribution (withdrawn)

UNION POSITION: The Union demands an increase of \$.50 per hour in the adjustments for Rates 2,3, and 4.

CITY POSITION: The City opposed any changes in current adjustments.

DISCUSSION: A \$.50 increase in the adjustments in the base rate would amount to an increase of 55.5% in the adjustment rate and 2.5% increase over the general rate paid in 2003, and when coupled with the 3% wage increase offer totals 5.5%. The City can ill-afford wage increases of this magnitude.

RECOMMENDATION: The Fact Finder recommends that current language be retained on adjustments.

ISSUE NO. 21

ADDENDUM XII- STREETS

Union Issue No. 14(a)- Flusher Truck Driver
14(b)- Increase in the tool allowance

UNION POSITION: The Union seeks an increase in the adjustment for flusher truck drivers from \$.35 to \$1 per hour. In 14(b) the Union is seeking an increase in the tool insurance allowance from \$240 to \$500.

CITY POSITION: The City opposed any changes.

DISCUSSION: The flusher truck drivers are seeking an adjustment of almost three times the current rate. The Union claims that it is impossible to calculate the costs to the City since the 15 vehicles are intermittently driven by some 52 drivers. In any event this is a pyramid wage increase.

Through the process of collective bargaining, the parties have succeeded in creating an extremely difficult method of wage calculation. Since this method was created through collective bargaining, collective bargaining and not a fact finder

recommendation should resolve it. On its face, the Union request far exceeds the 3% wage increase discussed throughout this report.

In 14(b) the Union is requesting an increase in the tool insurance allowance of more than 100% without showing a need, an increase in insurance premiums or exactly how many of its members actually carry "tool insurance". Tool insurance is a euphemism for another economic perk. There was no evidence introduced to establish tool use, tool replacement costs or tool service life.

RECOMMENDATION: The Fact Finder recommends that current contract language be retained.

ISSUE NO. 22

ADDENDUM XIII- MOTOR VEHICLE MAINTENANCE

Union Issue No. 15 Inequity Allowance (withdrawn by the Union)

SEASONAL EMPLOYEES

There are 73 seasonal employees in the bargaining unit. They perform many of the same jobs as do the full-time non-seasonal employees and appear to work on a full time basis.

They receive a lower base rate than non seasonal and few benefits. They are covered under a separate agreement.

In 2001, the seasonal employees received the same 3%, 3.5% and 4% wage increase as did the non-seasonal members. In addition, they receive adjustment for certain jobs.

Most seasonal personnel are employed in either the streets or waste collection departments with a few at the airport and port control. (Union Seasonal Ex. 1).

The parties created a two tier system of employment without calling it as such. The evidence established that they perform virtually the same types of jobs, for the same number of hours and under the same conditions, yet are paid substantially less. The parties mutually agreed to this system through collective bargaining. The individuals hired into this category were hired as seasonal employees with all of its connotations. They knew at the time of hire that they were not regular employees.

ISSUE NO. 23

ARTICLE XXV- WAGES

Union Issue No. 1(a)- Wage Increase
1(b)- Equalization

CITY POSITION: The City offered the seasonal employees the same -0%-, \$500 lump sum and 3% increase as offered to the non-seasonal employees.

UNION POSITION: The Union wanted 3% across the board increases and in addition, sought to equalize the rates of pay of all truck drivers whether seasonal or non-seasonal.

DISCUSSION: The Wage Article of the contract does not contain a schedule of wages paid to this group. The contract simply contains the wage increases agreed upon in the last contract and the "plus adjustments". Testimony established that seasonal truck drivers earn about \$2.52 per hour less than non-seasonal drivers.

This group of employees were hired as seasonal employees. According to the Union's Exhibit 2, the seasonal employee with the most seniority appears to have been hired in 1997. There was some evidence that the seasonal employees work full time (Tr. 259-260).

Whether paying the wages and benefits to seasonal or non seasonal employees, the City is faced with the same economic burdens which do not permit it to meet the demand for an across the board 3% increase nor to equalize the pay between seasonal truck drivers and non seasonal truck drivers even though they may be performing the same work.

RECOMMENDATION: A wage increase of 0%, \$500 lump sum and 3% is recommended. No other changes are recommended.

ISSUE NO. 24

ARTICLE XXI- PAY DAY

Union Issue No. 2

There is no need to get into specifics on this request. It was adequately discussed under the Non Seasonal Employees section. It was not recommended there and is not recommended here.

ISSUE NO. 25

UNIFORMS (A NEW ARTICLE)

Union Issue No. 3

UNION POSITION: The Union wants seasonal employees to receive a uniform allowance.

CITY POSITION: The City opposes paying a uniform allowance to the seasonal employees.

DISCUSSION: It does not appear that seasonal employees were ever required to wear uniforms or special clothing during working times nor did they ever receive a uniform allowance. Therefore they are not entitled to a uniform allowance.

RECOMMENDATION: A Uniform Allowance for seasonal employees is not recommended.

ISSUE NO. 26

FULL TIME EMPLOYMENT (A NEW ARTICLE)

Union Issue No. 4

UNION POSITION: The Union wants all seasonal drivers to become full time employees after 3 years.

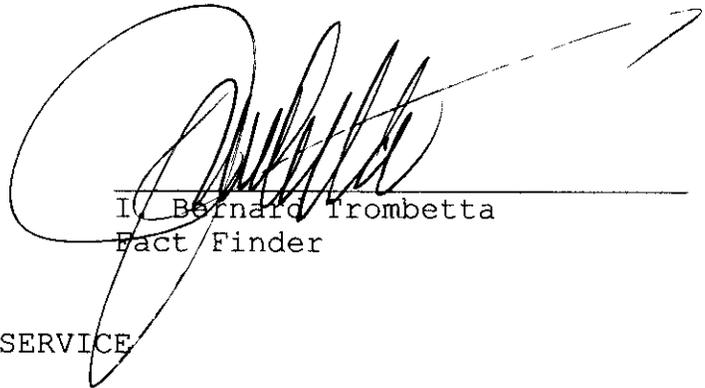
CITY POSITION: The City opposes the request

DISCUSSION: As observed above, this two-tiered system is the result of collective bargaining. The frustration of the long time seasonal employee is recognized. He has no place to go, he had no expectation of being classified as a full time employee even though he may be working full time employment. He has no health care coverage or vacations and no prospects of receiving either.

The seasonal employee classification may have been intended to cover emergency situations, or situations when additional labor is needed, yet it has evolved into what appears to be full time, at least for some, employment at lower wages and very few benefits. This category comes before the fact finder as a fait accompli. To rid itself of this classification, the City, undoubtedly, will seek

a quid pro quo and the Union failed to offer one. The parties created the situation and the parties should resolve this situation. The system is unfair, but there do not appear to have been any promises made to seasonal employees about when or if they would become non seasonal employees with full benefits. The Fact Finder should not rewrite the agreement. The changes sought by the Union can only be accomplished through the collective bargaining process.

RECOMMENDATION: The Fact Finder does not recommend this proposal.



I, Bernard Trombetta
Fact Finder

SERVICE

A copy of the Fact Finder's Report & Recommendation was mailed to Jarrell Williams, President Local 244, 2800 Euclid Avenue, #100, Cleveland, Ohio 44115 on behalf of the Union and to Craig Brown, Esq., Duvin, Cahn & Hutton, 1301 East Ninth Street, Cleveland, Ohio 44114 on behalf of the City of Cleveland on this 4th day of April 2006 by ordinary U.S. Mail.

