

IN THE MATTER OF FACT FINDING

2005 MAR 31 A 11: 30

BETWEEN

**AFSCME OHIO COUNCIL 8, AFL-CIO AND
LOCAL 1313**

AND

THE CITY OF TWINSBURG

**SERB CASE # 04-MED-08-0764
MAD**

ADVOCATE FOR THE CITY:

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ADVOCATE FOR THE UNION:

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INTRODUCTION

The bargaining unit is represented by Local 1313, AFSCME Ohio Council 8, (hereinafter "Union" or "AFSCME") and the Employer is the City of Twinsburg (hereinafter "Employer" or "City"). The bargaining unit is comprised of approximately thirty- (30) employees who provide a wide variety of maintenance services in the areas of public works, parks, recreation, and upkeep of the golf course. The previous contract between the parties expired October 31, 2004. The parties held several bargaining sessions and were able to resolve most of the issues before them. A mediation/fact-finding hearing was held on March 16, 2005 over the following unresolved issues:

Listing Of Unresolved Issue(s):

Hours of Work/Overtime (Article 16)
Vacations (Article 25)
Holidays and Personal Days (Article 26)
Wages (Article 2)
Insured benefits (Article 21)

Prior to a formal submission of evidence, the fact-finder made a concerted effort to bridge the differences between the parties over the unresolved issues listed above. Settlement possibilities were assessed with the

parties in an effort to find common ground upon which to construct a settlement. However, sufficient compromise on the unresolved issues could not be achieved in order to bring about an agreement. The parties then reverted to their position statements. The fact-finder, who has previously served as a neutral in the contract between the parties, is familiar with the history of the bargaining relationship. This prior experience provided the fact-finder with the ability to better understand the background of the issues in dispute during attempted mediation. In the opinion of the fact-finder, the parties have a very good working relationship. Moreover, the demeanor and conduct of the participants from both bargaining teams exemplify the sincerity in which the parties view their roles. The individuals present during the fact-finding process demonstrated a sincere interest in providing quality service to the citizens of Twinsburg.

Both Advocates represented their respective parties well and clearly articulated the position of their clients on the issue in dispute. In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text of the parties' proposals on each issue, but will instead reference the Position Statement of each party along with a summary. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

OVERALL RATIONALE FOR RECOMMENDATIONS

These are uncertain times for Ohio public employers. While the state of Ohio struggles with a shortfall between revenue and expenses that is tallied in the billions of dollars, the governor is seriously considering reducing support to cities that has been traditionally provided via local government funding. The federal government is reducing aid to the states and, in turn, the states are reducing aid to municipalities and other local government entities. Twinsburg is fortunate to have a reasonably sound local financial base, with one of its largest employers being the Daimler-Chrysler Plant. Yet Twinsburg, like other cities in Ohio, has lost jobs in recent years. The City's carry-over balance, while currently substantial, is projected to decline due to the need to offset rising costs. The City states this is an early warning signal that requires cautious decision-making.

Cities like Twinsburg are in far better shape than many other municipalities to withstand the economic foul weather that appears to be plaguing Ohio for the foreseeable future. However, as with all businesses there is a bottom line to watch, and the business of public government is no exception. It has been said that the keys to sound management are prudent stewardship of resources, fiscal responsibility, revenue growth, and maintaining quality employees. The City is fiscally sound, but like all Ohio cities it must compete with states with lower taxes, and lower wages for new business and revenue sources. Moreover, the City is

vulnerable to the fortunes of its major corporate resident, Daimler-Chrysler. The U.S. auto industry is currently carrying large inventories, and sales are down. Whether this will continue is unknown, but there is no doubt the City is affected by the volatile auto market.

In addition to the complex nature of running a City, there is the need to provide high quality city services to the citizens of Twinsburg. This balancing act of providing quality services, while prudently managing public funds, places considerable pressure upon city councils, city administrators, and the very employees a city must rely upon to provide quality services. It goes without saying that quality services require quality employees, and in order to retain and recruit good employees they must be compensated fairly.

Both parties have proposals concerning the narrow issue of the smallest increment of compensation time that may be used. The Union is seeking the ability to take compensation time in 30 minute increments. The City is seeking to expand the current one (1) hour minimum for use of compensation time to four (4) hours. The Union argues that on occasion an employee may only need to use 30 minutes of compensation time. On the other hand, the City asserts that increasing the compensation time minimum to four (4) hours would enhance its crew scheduling.

Bargaining history is an important criterion upon which to make judgments in this type of matter. It is noteworthy that only three (3) years ago the parties agreed to allow employees to take compensation time in one (1) hour

increments. Moreover, the fact-finder inquired about frequency of one (1) hour requests for compensation time, and it appears there have been few. Therefore, there is little data to demonstrate that the current language is inadequate or problematic for either party.

This is not to say that the use of compensation time is not an important operational issue for the City. The scheduling of work is an important function and the Public Works Director, Chris Campbell, effectively articulated his concern, particularly if the minimal increment of time would be reduced below one (1) hour. However, the Union raised an equally compelling argument regarding the minimal use of compensation time. According to bargaining team members, one (1) hour is often all that an employee may need to make an appointment or get ahead of traffic to meet a personal obligation. However, an employee must receive approval in order to take compensation time.

In Section 11 of Article 16, there are specific safeguards built into the use of compensation time. There must be advanced notice of at least two (2) days, unless waived by a supervisor, and compensation time may be denied, "*due to work schedules and insufficient staffing...*" However, the Union has the protection of the language in Section 11 that states a request for the use of compensation time "*shall not be unreasonably denied.*" Based upon these facts, I find there is insufficient reason to change what the parties negotiated just

three (3) years ago.' The same rationale applies to the Union's and the Employer's request to change the language of Section 7 of Article 26.

Currently, vacations are chosen by seniority, with the most senior employees having first choice to schedule all of their time. The most senior employees get five (5) weeks of vacation. When several employees have earned the right to four (4) or five (5) weeks of vacation, it is inevitable that the most senior employees will secure many of the prime vacation periods. According to the Union, as many as nine employees, or approximately one-third (1/3) of the bargaining unit has at least four (4) weeks of annual vacation and another ten (10) employees have at least three (3) weeks. Barring any future agreement by the parties to change the vacation distribution system to one in which employees choose so much vacation during multiple rounds of choice, (e.g. each employee by seniority chooses half of their vacation in a complete round), a small number of employees will always be able to take all their vacation during peak vacation times.

Section 5 of Article 25 addresses the language the Union is seeking to change. The Union desires that a minimum of five (5) employees be able to take vacation leave on the same day. This would obviously allow more employees to gain access to prime vacation weeks. However, it would also place the City in a position of having approximately one-sixth (1/6) of the bargaining unit on vacation during any one day. Moreover, if other employees

are absent due to illness or other leave (e.g. funeral leave), in addition to having a minimum of five (5) employees absent, it could seriously impact City services.

The Union's concerns are not without some foundation. The last sentence of Section 5 of Article 25 reads as follows:

"Vacation may only be cancelled by the employer in an emergency or for unforeseen operational needs, but shall not be done in an arbitrary or capricious manner."

There is little evidence to demonstrate that the City has purposely administered this provision in a manner that regularly disadvantages employees. However, I understand the Union's point that the denial of vacation time should be based upon legitimate operational needs and should not be subject to a blanket rule prohibiting more than three (3) employees to take vacation at the same time. The Employer denies the existence of such a rule and insists it schedules vacation in accordance with the Collective Bargaining Agreement.

There is no doubt that the Union considers this to be an important issue, particularly as the workforce ages. Without more data to support its position, I find there is insufficient reason to introduce a quota into the language of Article 25. And, as previously stated, a different format that includes scheduling vacation in rounds, rather than all at once, may eventually be considered by the parties. However, the thrust of the Union's proposal also raises the question of arbitrary conduct in the scheduling vacation. I find the last sentence of Section 5, while protecting the Union from arbitrary or capricious conduct in the

canceling of approved vacation time, does not include a safeguard against arbitrary conduct in the scheduling of vacation time.

The City is not claiming an ability to pay in this fact-finding. Yet, it insists that it must become more discreet in its management of costs in light of a projected need to balance its budget by supplementing its income from its current carryover balance. I find the City's arguments to be persuasive, not on the basis of its current healthy carryover, but on its projected costs and the uncertainty of its revenue stream. The Governor is seriously considering cuts to local municipalities in a state budget that is attempting to address a shortfall measured in billions of dollars. In addition, the economy of Ohio, while hopefully improving, is by no means robust. According to Union Exhibit 1, the City's carryover balance in January of 2005 is approximately two and one-half million dollars greater than at the end of 2003. The City's wage offer is eight percent (8%) over three (3) years (3%, 2.5% and 2.5%). The Union is seeking wage increases of twelve percent (12%) over the same period. There is no disagreement that wage increase shall be retroactive to November 1, 2004.

While the City's proposal in the second and third years falls short of the three percent (3%) average that has existed in the public sector for several years, it reflects more a ambiguous financial time. It is also consistent with a general scaling back of salary increases that is being exercised by public employers in Ohio. One bargaining unit in the City has already agreed to these wage increases, and according to the City, non-bargaining unit employees will

receive the same wage increases. It is also clear that the safety bargaining units, whose contracts overlap the AFSCME bargaining unit, will be negotiating in 2005.

While it is somewhat difficult to compare bargaining unit contracts that overlap, the years that overlap have some probative value. It appears the Cities' first year offer of 3% is in line with what safety bargaining units received in the last year of their contracts. However, it is also a fact that the AFSCME bargaining unit in the 2004-2005-plan was able to maintain fully paid health care coverage during a period when safety forces were exposed to premium costs. It is also a fact that the work and hours of safety forces differ greatly from that of a service or parks department. For example, a fire department and the structure of the job that is performed by the fire fighters is substantially different from the work of the service department. Such differences make comparisons between safety units and services units somewhat problematic.

Negotiating a contract, like negotiating any three- (3) year commitment, entails making decisions in the window of time during which the negotiations possess finite information and only predictions for the future. The future of the economy is a subject economists debate and disagree over regularly. What safety forces will receive in wage increases for 2006 through 2008 will be negotiated at a time different than the current negotiations for the AFSCME unit. There is no way of determining whether the economy will be better or worse during that negotiations window. However, it is clear that the AFSCME unit will

be negotiating for its 2008 increase in 2007 and will again have the advantage of living in the economy immediately preceding the agreement on wages for 2008. The Union raised the prospect that PERS rates may also go up for employees and employers during the life of the Agreement. However, it is clear that if bargaining unit employees will be required to pay a higher rate for PERS, such a change would be subject to ORC 4117.

The Union is proposing to pay for a portion of the premium on health care. The Union is recognizing a need to depart from the past when the City provided fully paid health care. However, it is also clear from the experience of this neutral that in many public sector jurisdictions in Ohio, employees have had to pay a portion of the premium toward their health care for several years. The Union proposes to cap the per month premium costs to bargaining unit members at \$15 for single and \$30 for family per month.

The Employer currently pays 100% toward vision and dental care and is not proposing to have employees pay toward these benefits. The City is proposing that the bargaining unit be required to pay for health care premiums at the same rate as other city employees. What is not clear is whether the City's proposals address all city employees. It is important for as much consistency as possible to exist among bargaining unit and non-bargaining unit employees who have the exact same health care plans. Therefore, the AFSCME unit should not be exposed to greater premiums than those of any other employee group, including non-bargaining unit employees.

Determination:**Maintain current language****Determination:****25
VACATION**

Section 1. Full-time bargaining unit employees are entitled to receive vacation after the completion of one-year service with the Employer in accordance with the following schedule:

Years of Service	Vacation Days	Accrual Rate/80 Hours
1 year up to 5 years	2 weeks (up to 80 hours)	3.1 hours
5 years up to 10 years	3 weeks (up to 120 hours)	4.6 hours
10 years up to 20 years	4 weeks (up to 160 hours)	6.2 hours
20 years or more	5 weeks (up to 200 hours)	7.7 hours

Section 2. No bargaining unit employee will be entitled to vacation leave or payment for vacation until he/she has completed one year of employment with the City. Upon attainment of one-year service with the City, an employee is credited with eighty (80) hours of vacation, and begins to accrue at the indicated rate. Employees are credited with an additional forty (40) hours on attainment of five, ten and twenty years service.

Section 3. Length of service for the purpose of calculating vacation will include all prior service with the state of Ohio and any political subdivision of the state.

Section 4. The rate of vacation pay shall be the bargaining unit employee's regular straight time hourly rate of pay in effect for the employee's regular job plus any applicable shift differential in effect at the time the vacation is taken.

Section 5. Vacation may be taken in minimum increments of four (4) hours. Employees shall submit vacation leave requests to the Employer prior to October 1 for the vacation year December 1 through November 30. Employees in the Service Department must pre-schedule all vacation to be used in the vacation year with the exception of forty (40) hours. Vacation requests shall be granted based upon seniority and workload. Vacation requests submitted after October 1 will be considered with a minimum of two (2) weeks notice. The two (2) week's notice may be waived by the supervisor. Vacation may only be cancelled by the employer in an emergency or for unforeseen operational needs. **Denial of a time to schedule vacation or refusal to grant an employee vacation time that has already been scheduled,** shall not be done in an arbitrary or capricious manner.

Section 6. Employees who work at Gleneagles may take a maximum of one period of five (5) consecutive vacation days in the period April through October.

Section 7. A maximum of ten (10) days (80 hours) may be carried over from one anniversary year to the next. On the employee's anniversary date each year, the employee may have no more than eighty (80) hours of vacation to his/her credit. Carry-over vacation must be used within three months of the anniversary date. Each employee is responsible to schedule and use vacation. No cash in lieu of vacation will be granted.

Section 8. Days specified as holidays in this Agreement shall not be charged to an employee's vacation leave.

Section 9. In the case of the death of a bargaining unit employee, the unused vacation leave to his/her credit shall be paid to the deceased employee's spouse and then equally to any children, and then to the estate.

Issue 3	Holidays and Personal Days	Article 26
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Determination:

Maintain Current Language

Issue 4 Wages Article 2

Determination:

Wage increases of 3% November 1, 2004

2.5% November 1, 2005

2.5% November 1, 2006

Issue 5 Insured Benefits Article 21

Determination:

**ARTICLE 21
INSURED BENEFITS**

The Employer shall maintain the Health, Life, Dental, Optical, Prescription Drug coverage and level of benefits currently in effect, however, should the Employer wish to change the coverage, plan design or premium paid, the Employer will provide thirty (30) days notice to the union prior to the change becoming effective, and offer an opportunity to negotiate over the change. **Beginning with the 2005-2006-plan year and throughout the life of the Collective Bargaining Agreement, bargaining unit employees shall pay no more in monthly premiums towards their health care coverage (excluding fully paid dental and vision) than the lowest premium paid by any other organized groups of employees in the City, including non union employees.**

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TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 30th day of March 2005 in Portage County, Ohio.


Robert G. Stein, Fact-finder