

IN THE MATTER OF FACT-FINDING

STATE EMPLOYMENT
RELATIONS BOARD

Before

RICHARD D. SAMBUCCO, FACT-FINDER

2005 MAY -9 A 11: 54

CITY OF BELPRE, OHIO

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FINDINGS OF FACT

AND

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AND

THE AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, OHIO COUNCIL 8,
AFL-CIO, LOCAL #3507

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RECOMMENDATIONS

SERB CASE NO. 04-MED-09-0930

REPRESENTING THE EMPLOYER: Mr. Charles A. King, Esq.
Clemans, Nelson & Associates, Inc.
411 West Loveland Avenue
Suite 101
Loveland, Ohio 45140

REPRESENTING THE UNION: Ms. Tamara D. Carsey, Staff Representative
AFSCME
36 South Plains Road
The Plains, Ohio 45780

DATE OF FACT-FINDING: April 14, 2005

DATE OF REPORT: May 4, 2005

PRELIMINARY STATEMENT

On April 14, 2005, a Fact-Finding hearing was held in Belpre, Ohio by and between the City of Belpre, Ohio, hereinafter referred to as the “Employer” and or “City” and the American Federation of State, County and Municipal Employees (AFSCME), Ohio Council 8, Local #3507, hereinafter referred to as the “Union”.

Richard D. Sambuco was mutually selected by the parties through the administrative services of the Ohio State Employment Relations Board (SERB) to serve as Impartial Fact-Finder.

Charles A. King, Director of Labor Relations, presented the Employer’s position. Also present for the Employer was William McAfee, Mayor and Robert Boersma, Safety-Service Director.

Tamara D. Carsey, Staff Representative of AFSCME, and Ohio Council 8 presented the Union’s position. Also present for Local #3507 was John McCloud, President; Sandra Henthorne, Vice President; and Roger Snider, Board Member.

DESCRIPTION OF BARGAINING UNIT

The bargaining unit consists of twelve (12) employees. Four (4) employees are in Water and Sewer Maintenance, four (4) in Wastewater, three (3) in the Street Department, and one (1) Account Clerk/Receptionist at the City Building. Six (6) employees are members of the Union and Six (6) employees are not members of the Union.

EVIDENTIARY BACKGROUND

In my fact-finding hearing (April 14, 2005) confirmation letter dated April 15, 2005, I made note that I received the Employer’s “position statement” on April 8, 2005, by UPS, Next Day Air. In that same letter, I also made note that the Unions “position statement” was received on April 15, 2005, at 12:00 noon by United States Postal Service even though the mailing was postmarked April 11, 2005.

The Fact-Finder refers the parties' attention to certain sections of the Ohio Revised Code (ORC) and the administrative rules (OAC) of the SERB, which read in pertinent parts as follows:

“4117.14 (c) (4) (b) – The fact-finding panel shall conduct the hearing pursuant to rules established by the board.

4117.14 (c) (3)(a) – The board shall by its rules require each party to specify in writing the unresolved issues and its position on each issue to the fact-finding panel.

4117-9-05 (F) – A failure to submit such written statement to the fact-finder and the other party prior to the day of the hearing shall cause the fact-finding panel to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing.”

The Ohio State Employment Relations Board (SERB) in its letter dated March 23, 2005, to the parties, states in pertinent part as follows:

“No later than the day prior to the hearing, each party must provide its position statement to the fact-finder and to the other party or the party will be restricted in presenting evidence at the hearing”. Emphasis added.

In accordance with the foregoing citations, this Fact-Finder was restricted to the taking of evidence only in support of matters raised in the written statement that was submitted prior to the hearing.

The foregoing, notwithstanding, this Fact-Finder did allow the Union, during the hearing, to verbally express their rationale regarding certain outstanding issues.

The recommendations contained in this report are based upon the position statement provided to the Fact-Finder prior to the hearing and evidence in support of matters raised in the written statement submitted prior to the hearing. There was no attempt to mediate any of the outstanding issues for two (2) reasons:

1. The Employer in its position statement submitted prior to the fact-finding hearing states in pertinent part as follows:

“It is the position of the City of Belpre that it’s last, best and final offer has been presented. Any deviation from that offer will result in rejection by City Council”.

2. The second reason for not attempting to mediate any of the issues was the absence of the Union’s position statement on its issues prior to the fact-finding hearing.

The issues presented in the Employer’s position statement are Holidays, Wages, Insurance, Clothing and Duration. The Employer also listed in its position statement the following items as “Rejected Proposals”, Check-off, Fair Share, Work Rules, Vacation, and Miscellaneous (Training and Testing).

Since these latter five items were presented as “Rejected Proposals” in the Employer’s “position statement”, the conclusion to be drawn is that, the Union proposed changes to those items, the Employer has rejected them and, since none of these five (5) items are non-mandatory subjects of bargaining, and the parties have not reached agreement on a new collective bargaining agreement, it can logically be concluded that those items contained under the heading of “Rejected Proposals” are issues at impasse.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05. The criteria are :

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

- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 agree-upon dispute settlement procedures in the public service or private employment.

ISSUE: ARTICLE 21 - HOLIDAYS

The relevant language of Section 21.3 of the current collective bargaining agreement (Joint Exhibit No.1) reads in pertinent part as follows:

Employees who actually work on a holiday will be paid one and one half (1 ½) times their regular rate for hours worked in addition to their regular rate of pay. (e.g. 20 hours pay for 8 hours worked on a holiday).

UNION POSITION: The Union is requesting holiday pay for all hours worked beyond eight (8) hours on a holiday. For example, not only do they want paid time and one half (1 ½) for working say sixteen (16) hours on a holiday, they want to be paid sixteen hours of holiday pay at their regular rate, instead of just eight (8) hours of holiday pay.

EMPLOYER POSITION: The City proposes to strike the phrase contained in the current language of Section 21.3 which reads: “their regular rate of pay (e.g. 20 hours pay for 8 hours worked on a holiday”.

DISCUSSION: When work is required on a holiday, collective bargaining agreements provide for compensation at a premium rate, based on the theory that work on a holiday is a sacrifice on the part of the worker deserving of a special reward.¹ Employees who are scheduled to be off work have an expectation that their leisure time will not be interrupted. Contractual obligations that an employer must pay a premium for the inconvenience that

unscheduled work causes its employees are a means whereby an employer in effect purchases the employee's leisure time. These provisions also act as a disincentive for an employer to require employees to work outside their normal hours. By the same token, the premium pay serves as an encouragement to employees to work on the days that they are otherwise scheduled to be off.²

In this instant case, pay at time and one-half (1 ½) for all hours worked on a holiday is the "premium" and "incentive" to get employees to work on a holiday. The eight (8) hours of holiday pay is a Union negotiated benefit that is included in every collective bargaining agreement, public and private sector that I am aware of. (Emphasis added.)

FINDING OF FACT: Although the Union's demand is allowable under the ORC, in the absence of supporting evidence the Union did not prove that there was a need to improve the holiday pay benefit. Payment of time and one-half for hours actually worked on holidays is standard practice in Ohio and the United States.

RECOMMENDATION: The relevant language to be included in Section 21.3 of Joint Exhibit 1 should read as follows:

"Employees who actually work on a holiday will be paid one and one-half (1 ½) times their regular rate for all hours worked in addition to eight (8) hours of holiday pay at their regular rate of pay."

This recommendation is essentially the same as the current language but clarifies the intent (i.e. 8 hours at 1 ½ pay = 12 hours plus 8 hours of holiday pay = 20 hours pay for 8 hours worked on a holiday. The necessity for an example in the current language is not necessary.

ISSUE: WAGES-ARTICLE 24, SECTION 24.1

There are two separate issues under Article 24 and they will be discussed separately.

UNION POSITION: The Union proposes a \$1.00 per hour increase in the hourly rates of pay listed in Appendix I of the Agreement (Joint Exhibit No.1) in each year of a three-year contract. In addition, the Union is proposing a Cost of Living increase.

EMPLOYER POSITION: The City is proposing a twenty-six cents (\$0.26) increase in the hourly rate of pay for the hourly rates of pay listed in Appendix 1 of the Agreement in the first year; a forty cents (\$.40) per hour increase in the second year of the Agreement, and a forty-two cents (\$0.42) per hour increase in the third year of the contract. According to the City, this represents a two (2%) percent increase in the first year, a three (3%) percent increase in the second year and a three (3%) increase in the third year of the contract. The City also points out that their proposal is consistent with what other union and non-union personnel have received.

DISCUSSION: In reviewing APPENDIX A-1, BASE WAGE RATES effective 01/01/04 of the Agreement (Joint Exhibit No.1), I totaled up all the hourly rates of those fifteen (15) classifications listed and arrived at an average hourly rate of \$12.38 per hour. ($\$185.79/15 = \12.38).

If we took a conservative estimate of one-half (50%) of the average hourly wage rate which amounts to \$6.19 to cover the cost of benefits (i.e. holiday pay, vacation, sick leave, insurance, (life, vision care and Dental II) and add the \$6.19 to the \$12.38, it brings us to an average hourly wage and benefit cost of \$18.57 per hour per bargaining unit

classification. And that cost is based upon hourly rates that were effective on 01/01/04, before the City's proposed increase.

A wage comparison of Belpre vis-à-vis other cities of comparable population reveals the following examples:

	<u>Belpre</u>	<u>New Lexington</u>	<u>Toronto</u>	<u>Jackson</u>	<u>Wellston</u>
Wastewater Plant Op I	13.41	11.71			
Wastewater Plant Op. II	14.18	11.83			
Wastewater Plant Op. III	14.93	12.04	10.96	11.98	12.50

The above rates are entry-level and top-level rates, except Jackson has a top rate of \$14.09 per hour. Toronto, Jackson and Wellston have only one classification, Wastewater Plant Op.

While there were other comparables (Job Titles) submitted by the Employer, the above job titles most closely matched with those at Belpre. Differences in job titles among organizations, stages of negotiation, (i.e. do the rates presented of other organizations reflect the old contract or the new contract) and differences in benefits (vacation, holidays, sick pay, medical insurance, life insurance, dental and vision insurance etc.) all play a role in the hourly rates of any given organization.

FINDING OF FACT: Public employers statewide granted an average wage increase of 2.79% to bargaining unit employees in labor contracts negotiated in calendar 2004. The increase is the lowest in ten (10) years, according to a Wage Settlement Breakdown just released by the Ohio State Employment Relations Board (SERB). This marks the first time in a decade that the average overall percentage increase has dropped below three percent (3%) according to SERB figures. With regard to wage rates in this instant case, I find that wage rates for the City of Belpre are comparable to cities of similar population size.

RECOMMENDATION: With regard to Section 24.1 of Article 24, effective with the signing of a new collective bargaining agreement by both parties, I recommend the hourly rates of pay listed in Appendix 1 of the Agreement be increased in accordance with the City's proposal; i.e. increased by twenty-six cents (\$0.26); increased by forty cents (\$0.40) effective with the beginning of the payroll period including January 1, 2006 and increased by forty-two cents (\$0.42) effective with the beginning of the payroll period including January 1, 2007.

ISSUE: WAGES – ARTICLE 24, SECTION 24.6 (A) & (B)

Subsections A and B of Section 24.6 has to do with certificate and/or licensing requirements for those employees in a classification that requires a certificate or license. This language was agreed to by the parties in the current three (3) year Agreement (Joint Exhibit No.1) and provided a window of eighteen (18) months and an additional six (6) months for the employee to obtain his/her certificate or license. Failure of the employee to satisfy the requirement would result in the employee's pay being reduced by ten percent (10%) until such time that the required license or certificate was obtained. For those bargaining unit employees in a supervisory position who failed to obtain a certificate or license within the same time frame (18 months plus 6 months), that supervisor's pay would be reduced by twenty-five cents (\$0.25) per hour until such time that the required license or certificate was obtained.

UNION'S POSITION: The Union does not want to take away pay from employees who have been performing their duties in their position without licenses or certificates. (Emphasis added.)

The Union proposes to eliminate the entire Section 24.6 (A) and (B) from the proposed Agreement. They argue that since the employees have been doing the job in the past, there is no need to have the employee licensed. They also point out that one employee in the classification doesn't feel confident in his/her ability to pass the test. The implication was that he or she was weak on mathematics. The Union also argues that if the Water Crew Foreman gets his license/certification then the person working under him shouldn't need to be licensed and/or certified.

EMPLOYER POSITION: The City asserts that the Water Crew Foreman has not obtained his license or certification and it's been three (3) years (the contract period) and those employees that should be getting their license/certification have not done so. As a result the City proposes to delete completely subsections A and B, (the language that provides a time frame (open window) for acquiring a license/certificate), and replace those two (2) subsections with a more restrictive language that reads as follows:

Any incumbent employee who, as of the execution of this agreement, is in a classification that requires a certificate or license and does not obtain the license or certificate will have his pay reduced by ten percent (10%); until such time that the required license or certificate is obtained. If the employee is in a supervisory position and the required time period, then the employee's pay shall be cut by an additional twenty-five cents (\$0.25) per hour until such time that the required license or certificate is obtained.

The City also points out that in the past they have always paid for training and training materials and agrees to do so for this licensing/certification requirement.

DISCUSSION: This Fact-Finder refers the parties' attention to ARTICLE 8-MANAGEMENT RIGHTS. This ARTICLE 8 provides the City with the authority and responsibility to direct the working forces, i.e. (9) take actions to carry out the mission of the public employer as a governmental unit. Three other rights of management; i.e. (4) Determine the overall methods, process, means, or personnel by which governmental

operations are to be conducted; (3) Maintain and improve the efficiency and effectiveness of governmental operations; (6) Determine the adequacy of the work force, can all be construed as the requirement for licensing and/or certification for certain employees, notwithstanding licensing and/or certification requirements by certain outside agencies. (Emphasis added).

It is incumbent upon me to also mention that when two (2) parties agree to language as that expressed in ARTICLE 24, Section 24.6 (A) and (B), there is an obligation not only on the part of the affected employees but also on the part of management to insure that the requirements agreed to are fulfilled. This can be achieved through the exercise of items 2,5, and 8 of the management rights article. (See ARTICLE 8, MANAGENT RIGHTS)

If both parties agreed, as expressed in the current contract, (Joint Exhibit No. 1) that it was necessary for a certain classification (s) to be licensed and/or certified and three (3) years have gone by and very little was accomplished, (i.e. Employer stated at the hearing that the “Water Crew Foreman has not obtained his certification”) what is the purpose of the existing language?

Now we have the City reacting by proposing language that places an immediate reduction in wages as of the execution of a new agreement for not having a certificate and/or license. Will this proposed new language by the City be conducive toward acceptance by the Union? I think not.

Referring back to the City’s proposed new language for ARTICLE 24, Section 24.6; there are two (2) phrases that give cause for concern; and they are:

1. “and does not obtain the license or certificate” and
2. “and the required time period”.

These two (2) phrases are vague and somewhat ambiguous. In phrase 1 above, is the City still planning to allow the employee a certain amount of time to obtain the license or certificate.

In phrase 2, is it the intent of the City to provide a “required time period” to obtain a license or certificate for the supervisory position and not the non-supervisory employee?

RECOMMENDATION: There needs to be some teeth in the language to get the employee to satisfy the City’s management right to require licensing and/or certification and there needs to be an incentive for the employee to not only acquire the license and /or certificate but to vote in favor of a new Agreement. The language I propose is as follows:

“Any incumbent employee who, as of the execution of this agreement, is in a classification that requires a certificate or license will have his pay reduced by ten percent (10%) until such time that the required license or certificate is obtained. Upon obtaining the license or certificate, the employee will be reimbursed retroactively the ten percent (10%) reduction in pay from the date of the execution of this agreement.

If the employee is in a supervisory position, then the employee’s pay shall be reduced by an additional twenty-five cents (\$0.25) per hour until such time that the required license or certificate is obtained. Upon obtaining the license or certificate the supervisor will be reimbursed retroactively, the combined amount of monies ((ten percent (10%) plus twenty-five cents (\$0.25) per hour)) from the date of execution of this agreement

ISSUE: INSURANCE - ARTICLE 25

At present, the City pays eighty-five percent (85%) of the applicable premium and the employees pay fifteen percent (15%) of the applicable premium for a health care plan.

UNION POSITION: The Union wants the City to pay one hundred percent (100%) of the applicable premium.

EMPLOYER POSITION: The City Proposes maintaining the current language, i.e. City pays eighty-five percent (85%) of the applicable premium and the employee pays fifteen percent (15%) of the applicable premium.

DISCUSSION: The city currently provides a health care plan consisting of major medical, surgical, basic hospitalization benefits, and prescription drug service for all employees who elect to enroll. For this, the City pays eighty-five percent (85%) of the applicable premium.

A second plan, known as the AFSCME Care Plan on life insurance, vision care, and Dental II is available for each bargaining unit employee. The City has agreed to increase its cost from forty dollars and twenty-five cents (\$40.25) to forty-eight dollars and twenty-five cents (\$48.25) per month for each bargaining unit employee. This represents a 20.5% increase in the cost to the City.

RECOMMENDATION: The Union agrees to the City's proposal to increase its (City's) cost by eight dollars and twenty-five cents (\$8.25) for the AFSCME Care Plan. As a result I recommend no change in the City's portion (85%) of the applicable premium and (15%) for the employees cost of the applicable premium for the major medical etc., health care plan.

ISSUE – CLOTHING – ARTICLE 26

Under the current collective bargaining agreement (Joint Exhibit No.1), the City furnishes each employee in the Water/Sewer Department, Wastewater Treatment Plant and Street Department with one set of rain gear, work gloves, and rubber boots for employee's use at job sites. The current language allocates \$200.00 per year for work clothing and \$150.00 per year for work boots.

The City and the Union are in agreement that the above two figures (\$200.00 + \$150.00) be combined for a total of \$350.00 per year for clothing and work boots. The Union demands that the Account Clerk also be allocated \$350.00 per year for clothing allowance. Emphasis Added.

UNION'S POSITION: The Union argues that the Account clerk is a Union member, pays Union dues and has to buy her own clothes for work.

EMPLOYER POSITION: The City explains that the Account clerks duty station is behind a desk inside a building and the intent of the language of ARTICLE 26 – CLOTHING is to accommodate those situations in which the above mentioned employees are required to work in less than desirable conditions and/or inclement weather.

DISCUSSION: Accepted parlance in both the public and private sector for providing this type of clothing and boots is referred to as “Foul Weather Gear”. The understanding is that employees could be asked to work in rain, snow or cold weather. It is conceivable that on certain days water and sewer employees could be working on a bright sunny day but in foul smelling water up to their hips. The incidence of an Account Clerk having to work under these conditions is remote if not non-existent.

The intent of this language ARTICLE 26,Section 26.1 is to provide the necessary clothing to accommodate the conditions under which employees are asked to perform. The intent of this language is not to provide a clothing equity for all Union employees or even all employees, Union or not.

RECOMMENDATION: I recommend the language as proposed by the City;(i.e. three hundred fifty (\$350.00) for clothing allowance) in which both parties are in agreement. The Account Clerk should not be included in the provision for clothing allowance.

ISSUE – DURATION – ARTICLE 30

Section 30-1 The parties are in agreement that the new agreement should become effective upon the approval of both legislative bodies and remain in effect through 11:59 p.m., December 31, 2007.

RECOMMENDATION: I concur with the party's agreement of when the Collective Bargaining Agreement becomes effective and when it expires.

REJECTED PROPOSALS

As previously indicated, the City in its "position statement" listed five (5) rejected proposals. The conclusions to be drawn from the City's "Rejected proposals" are that the Union proposed changes to those items presented and the City has rejected the Union's demands. The items listed by the City and rejected by the City are Check Off, Fair Share, Work Rules, Vacation and Miscellaneous (Training and Testing).

Since the parties have not reached agreement on a new collective bargaining agreement and since none of the five (5) rejected proposals are non-mandatory subjects of bargaining, the conclusion is that these rejected proposals can be considered as issues at impasse.

ISSUE – CHECK OFF – ARTICLE 5

The specific language at issue in ARTICLE 5 is Section 5.2, which reads as follows:

Section 5.2 The Employer shall be relieved from making individual dues deductions upon an employee's: 1) termination of employment; 2) transfer to a job outside the bargaining unit; 3) layoff from work; 4) taking an unpaid leave of absence; 5) written revocation of the check-off authorization by the employee in accordance with the Union Check-Off Card; 6) resignation from the Union.

UNION POSITION: The Union requests that item six "(6) resignation from the Union" be deleted from the above language. The Union argues that in the past bargaining unit employees have notified the City of their resignation from the Union while failing to notify the Union. The

Union further argues that the City immediately discontinues the deduction of Union dues upon receipt of the employee's resignation from the Union.

EMPLOYER POSITION: The City argues that rather than expose the City to potential liability by continuing to deduct dues from an employee, who has resigned from the Union, the safer approach is to discontinue the dues check-off.

DISCUSSION: The authorization for the City to make payroll deductions from pay or wages of employees comes from the submission of a signed check off card for or by the employee. (See ARTICLE 5, Section 5.1)

Absent a signed authorization card by the employee, the City lacks authority to deduct Union dues. Evidence of a signed authorization card represents a contractual agreement between the employee and his/her Union.

It would only seem logical that if it takes a signed authorization card between the Employee and the Union for the City to deduct Union dues then it should take a signed written revocation including notification to the Union of the employee's intent. Resignation from the Union, written or verbal, does not automatically trigger the cessation of Union dues deductions.

Withdrawal of membership in the Union is not the same as revocation of authorization to deduct Union dues. An employee could for personal or other reasons wish to terminate his union membership, but still wish to contribute to the cost of contract administration and thereby, be able to claim assistance from the Union, in the event of difficulty. Consequently, it does not automatically follow that communication of intent to withdraw from the Union implies intent to no longer pay dues to support the administration of the contract. Cancellation or revocation of the wage authorization requires a notice sufficient to apprise the parties "unequivocally" of that purpose. At best, the employee's notice to the City, absent, as in this instant case, notification to

the Union, indicates that he/she may have, or probably intended, to try to revoke or cancel his dues check-off. (See Asarco, Inc., 71LA730; see also 72 LA 937, 71 LA 228, 70 LA 58, 41LA 1073 and 36 LA 933).

For reasons stated earlier, it would be inappropriate for me to cite the language of the “Check-off Agreement” between the Union and the employee, but it would do well for the City to revisit its present position. The City’s concern for liability is without merit because of the language of Section 5.4. Check-off-Hold Harmless.

RECOMMENDATION: I recommend that the phrase “(6) resignation from the Union” be deleted from the language of ARTICLE 5, Section 5.2.

As a matter of clarification, the above recommendation does not take away the right of the employee to resign from the Union.

ISSUE: FAIR SHARE FEE – ARTICLE 6

The specific language at issue in ARTICLE 6 is Section 6.1, which reads as follows:

“Section 6.1. Each bargaining unit employee who is not a member of the Union shall, as a condition of employment, pay a fair-share fee to the Union. The obligation to pay the fair share fee shall commence either upon execution of this Agreement or sixty-one (61) days following an employee’s date of hire, whichever is later. Fair share fees shall be paid by automatic, payroll deduction. Fair share fee deductions do not require prior authorization from the affected employee. The Union shall prescribe a rebate and challenge procedure, which complies with applicable state and federal law. Fair share fees shall be deducted and transmitted to the Union in the same manner as regular dues. This provision will be maintained only during months in which the Union maintains majority status.”

UNION POSITION: The Union proposes to delete the last line of Section 6.1 which reads as follows:

“This provision will be maintained only during months in which the Union maintains majority status.”

EMPLOYER POSTION: The City rejects the Union’s proposal.

FINDINGS OF FACT: Except for the last line of Section 6.1, the language of Section 6.1 appears to conform to the requirements of ORC – OAC - 4117.09 (C).

DISCUSSION: As stated previously, the bargaining unit consists of twelve (12) employees: six (6) of which belong to the Union and six (6) that do not belong to the Union. This 50-50 split does not indicate a majority status nor does it indicate a minority status.

However, the last sentence of Section 6.1 appears to be in conflict with the preceding language of Section 6.1. The last sentence of Section 6.1 seems to imply that absent majority status, the language of Section 6.1 will not be maintained; understood to mean does not apply.

The City in its supporting documents submitted a seniority list. Contained within that seniority list are the names of six (6) employees out of twelve (12) total employees that carry a designation of "Fair" concluded to be Fair Share Fee employees, i.e. members of the bargaining unit, but non-members of the Union, and paying their fair share fee.

It is important to note that O.R.C. Chapter 4117 recognizes that members of a bargaining unit may fall into one of three categories: (1) members of the employee organization, (2) non-members of the employee organization and (3) non-members of the employee organization who are required to pay a fair share fee under O.R.C. 4117.09 (c).

Based on the City's seniority list my conclusion is that the six (6) employees with a "Fair" designation fall under category number three above.

The intent of the last sentence of Section 6.1 which reads: "This provision will be maintained only during months in which the Union maintains majority status" is vague and ambiguous regarding its application to the expressed language that precedes it.

RECOMMENDATION: The necessity of the last sentence in Section 6.1 escapes me, but the Union agreed to that language in the current agreement and given its potential implication it would not be appropriate for me as a neutral fact-finder to recommend deletion of the last sentence from Section 6.1.

Since the intent of negotiations and fact-finding is to encourage the parties to reach agreement, on a new collective bargaining agreement and since non-members of an employee organization have no right under O.R.C. Chapter 4117 to vote on the ratification of collective bargaining agreements or to attend pre-ratification informational meetings, I recommend the parties revisit their respective positions with regard to ARTICLE 6, Section 6.1 (See SERB OPINION in Case No. 95-ULP-03-0103, SERB v. Worthington Classified Association).

ISSUE: WORK RULES – ARTICLE 9

Section 9.1 reads in pertinent part as follows:

Section 9.1 The Union recognizes that the Employer or his or her designee has the right to promulgate work rules, policies, procedures, directives, and job descriptions, and to regulate conduct of the Employer's operations, services, programs, and business.

UNION'S POSITION: The Union proposes that all work rules, policies, procedures, directives, be applied "uniformly".

EMPLOYER POSITION: The City rejects the Union's proposal.

DISCUSSION: For the Union to put forth a proposal such as this implies a possible perceived notion of lack of uniformity of application of work rules, policies, procedures and directives, etc.

The proper forum for any perceived notion of lack of uniform application (i.e. discrimination, disparate treatment or violation of management rights) is the grievance arbitration procedure.

RECOMMENDATION: I recommend no change in the express language of ARTICLE 9.

ISSUE: VACATION – ARTICLE 22

UNION POSITION: The absence of a position statement in advance of the fact-finding hearing precludes the Union from advancing its proposal and any evidence in support of its position.

EMPLOYER POSITION: The City rejects the Union's position on changes in the Vacation Article. They contend that vacation provisions apply City Wide.

RECOMMENDATION: I recommend no change in the current language of ARTICLE 22, VACATION.

ISSUE: MISCELLANEOUS - ARTICLE 27.

The issue here is paid training for any employee who desires to be trained whether or not his/her job duties require training, licensing or certification, or whether or not he/she is in a department or line of progression to a job that would require training, licensing or certification.

UNION POSITION: The above statement is essentially the Union's position.

EMPLOYER POSITION: The City rejects the Union's proposal. The City asserts that it currently pays for all training and expense of training and it (City) will decide when who and what kind of training is needed.

DISCUSSION: The language of ARTICLE 27 is all - inclusive and self - explanatory. For reasons previously stated, the Union was precluded from submitting documented evidence in support of its position.

RECOMMENDATION: I recommend no changes to the language of ARTICLE 27, MISCELLANEOUS.

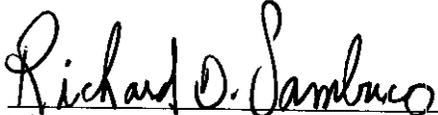
CLOSING REMARKS

In accordance with ORC-OAC 4117-9-05 (F), this concludes my report covering those matters raised in the written statement that was submitted prior to the fact-finding hearing held on April 14, 2005. I have attempted to make recommendations based on the record made at the hearing and the factual evidence available to me with the ultimate objective of bringing the parties together and encouraging them toward approval of a new three-year agreement. I trust,

given the circumstances, I have covered the issues in enough detail and my recommendations are clear enough to be implemented without too much tweaking on the part of the parties. My recommendations are predicated on the fact that all previously resolved issues are to be incorporated into the final agreement.

I wish both parties' success in their deliberations.

Report compiled and submitted in Belmont County, Ohio effective May 4, 2005.


Richard D. Sambuco, Fact-Finder

SOURCES CITED

1. ROBERT'S DICTIONARY OF INDUSTRIAL RELATIONS, 4th Edition, The Bureau of National Affairs, Inc., p. 311.
2. THE COMMON LAW OF THE WORKPLACE, National Academy of Arbitrators, Theodore J. Antoine, Editor, BNA, Washington, D.C. p. 254-255.

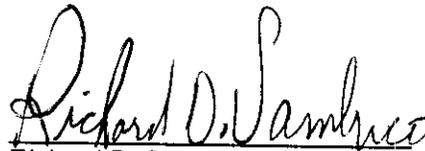
PROOF OF SERVICE

The undersigned certifies that two (2) copies of the enclosed fact-finding report was delivered by overnight mail to the below listed parties on May 4, 2005.

IN RE: CASE No: 2004-MED-09-0930
City of Belpre and AFSCME Local No.3507

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