FACT FINDER'S REPORT

STATE EMPLOYMENT RELATIONS BOARD
2006 NOV -6 A 10: 17

IN THE MATTER OF:

Teamsters Local Union No. 100
And
The City of Franklin, Ohio

Case Numbers:
2005-MED-10-1237 (Service)
2005-MED-10-1236 (Clerical)

Before Fact Finder
N. Eugene Brundige

PRESENTED TO:

Edward E. Turner, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th. Floor
Columbus, Ohio 43215-4213

And

Susan D. Jansen, Representative
Teamsters Local Union No. 100
Doll, Jansen, & Ford
111 West First Street
Dayton, Ohio, 45402

And

Brett A. Geary, Representative
For the City of Franklin
Clemans, Nelson, and Associates, Inc.
411 West Loveland Ave., Suite 101
Loveland, Ohio 45140

N. Eugene Brundige was selected by the parties to serve as Fact Finder in the above referenced cases and duly appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 (c) (3).

A hearing was held at Franklin, Ohio, on September 22, 2006.

The parties made a good faith effort to resolve the outstanding issues through mediation but were unable to do so.

A hearing followed which was limited to oral argument on the issue of sick leave buy-back provisions. The parties asked the Fact Finder to rule upon the other open issues based upon the documentation contained in the pre-hearing submissions.

In addition, the parties waived the provision for overnight delivery. The Fact Finder will issue the report by electronic mail followed by regular mail delivery.

The Union was represented by Susan D. Jansen, Attorney for Teamsters Local 100, Ron Butts, Business Agent for the Local, Cheryl Hedric, Steward for the Clerical Unit, and Joe Maggard, Steward for the Service Unit.

The City was represented by Brett Geary, Management Consultant and Donnett Fisher, City Law Director.

In their pre-hearing filings one or more of the parties identified the following issues and/or contract provisions as being unresolved:

ARTICLE 19 <u>LAYOFF AND RECALL</u> (Clerical Unit only)

ARTICLE 21 & ARTICLE 15 <u>SICK LEAVE</u>

ARTICLE 23 & 31 <u>WAGES</u>

BACKGROUND:

This case involves two units of employees who work for the City of Franklin, Ohio. The first is comprised of approximately twelve (12) service employees and the second is comprised of approximately seven (7) clerical employees.

Each unit has its own collective bargaining agreement with the City. Each agreement expired December 31, 2005, and continues to have effect under the provisions of ORC 4117.

The format of this report will be to list an article and a brief discussion of the background of the issue. A review of the position of each party will follow and then a discussion of that issue. My recommendation will be listed and, if new contract language is required to effectuate that recommendation, that language will be provided except in the case of wages where only the percent of increase will be listed.

Each recommendation will indicate if it is for one or both agreements.

LAYOFF AND RECALL

Article 19 (Clerical Unit)

Background:

Both parties have proposals in this article

The Union proposes changes in Section 19.1 and Section 19.2.

Section 19.1 currently contains a provision that says, "*Covered employees may be laid off for any reason deemed appropriate by the City Council.*" The Union proposes to delete that sentence.

In current contract language Section 19.1 provides that layoffs shall be, "*in accordance with departmental seniority.*" The Union proposes to modify that section by adding after departmental seniority, "*in which the bargaining unit employee has performed.*"

In Section 19.2 the Union proposes to strike the wording, "*provided they are presently qualified to perform the work in the classification or work section to which they are recalled.*"

The Employer proposes that layoff occur according to departmental seniority within the affected classification.

The Employer would also insert a listing of which classifications fit into which departments.

Position of the Union:

The Union believes that layoffs should allow persons who are laid off to bump back into a position they previously held.

Position of the Employer:

The Employer believes the current restriction that requires employees who bump to be "presently qualified to perform the work" should remain in the agreement.

The Employer argues that while its proposal would limit layoffs to affected classifications, the proposal to add bumping benefits would be a net gain for bargaining unit employees.

Discussion and Recommendation:

An axiom of collective bargaining has long been, "if it's not broke, don't fix it." Neither party's presentation clearly illustrated the problems inherent in the current agreement. Thus the temptation is to leave current language. But since both parties apparently feel a need for change in this area, the Fact Finder will attempt to address the proposals made.

The proposal of the Employer has some merit in attempting to group classifications into departments, but in a unit of seven employees it is difficult to do grouping that has any practical effect.

Likewise, bumping into the same classification is not a very meaningful activity in a bargaining unit of seven members.

Based upon the limited data presented, I recommend the following:

ARTICLE 19 – Clerical Contract

LAYOFF AND RECALL

Section 19.1 Covered employees may be laid off for any reason deemed appropriate by the City Council. In the event of layoff, the Employer shall notify the affected employee five (5) calendar days in advance of the effective date of the layoff. The Employer agrees to discuss with representatives of the Union, the

impact of the layoff on the bargaining unit member. Any layoff in the bargaining unit shall be in accordance with departmental seniority (i.e. the ***employee in the affected classification with the least amount of department seniority*** is the first employee laid off). ***For purposes of this Article, tax clerks, deputy tax administrators, and utility clerks shall be in the Finance Department. Secretaries and custodians shall be in the Administrative Department. Zoning and code enforcement officers shall be in the Safety Department. Park maintenance and park grounds workers shall be in the Service Department.***

Any employee laid off from the bargaining unit position may, at his ***or her*** option, displace a ***less senior full-time employee in the same classification, or he or she can displace a*** permanent part-time or intermittent employee in the same classification. ***In addition, any employee laid off from the bargaining unit position who has held another bargaining unit position within the last five (5) years, and who had more departmental seniority when leaving that position, may, at his or her option, displace an incumbent employee who has less departmental seniority as long as the position of the employee being displaced has a pay rate equal to or less than that of the position of the employee originally being laid off.*** Failure to bump or failure to accept a recall to a part-time or intermittent position shall not jeopardize an employee's recall rights to a full-time position.

Section 19.2 Maintain current contract language

Section 19.3 Maintain current contract language

Section 19.4 Maintain current contract language

SICK LEAVE AND INJURY LEAVE / FAMILY AND MEDICAL LEAVE

Article 21 (Service Unit)

Article 15 (Clerical Unit)

The Employer is the moving party regarding these Articles.

The first proposed amendment is to change the period for which an employee is considered to be incapacitated and unable to work from eight (8) hours to twenty-four (24) hours.

The second proposed change is for sick leave buy-out and would grand-person current employees providing 100% percent up to 150 days. New employees would be reduced to 25% of accumulated sick leave, to a maximum of 240 hours.

The Union favors current contract language.

Position of the Employer

The Employer believes changing the "incapacitated" time from 8 to 24 hours will help manage sick leave abuse.

The changes regarding sick leave buy-out is the Employer's attempt to manage unfunded liabilities.

The Employer argues that the benefit is extremely generous and was negotiated at a time when wages were low. Now that wages have reached a comparable level with other jurisdictions, it believes this benefit must be brought under control.

The Employer notes the difficulty in budgeting for such a generous proposal. Further, this benefit combined with the PERS pick-up works a financial hardship on the Employer.

It has been noted that the proposal will not affect current employees but will only apply to those who are hired after January 1, 2006, or the effective date of the agreement. The Employer believes this is a fair way to tackle this challenging issue.

The Employer counters the morale issue raised by the Union by stating it believes employees who are hired in the future are aware of the conditions under which they are being employed.

The Employer points to their comparable jurisdictions and notes that few have anything close to this type of benefit.

Position of the Union:

The Union believes that the benefit and the language of this Article should not be changed. Even though the changes would only affect new employees, the Union notes that such differentiated benefits always cause a problem for the Bargaining Agent.

When new employees are hired and discover that other more senior employees are receiving a richer benefit, such a situation leads to morale problems and concern within the unit.

The Union notes that the current agreement does not contain any such "two-tiered" benefits arrangements.

The Union also notes that it believes the City is attempting to gain this benefit in a strike eligible unit in order to set a pattern for bargaining with the safety forces.

The Union notes that the comparables are not necessarily the appropriate comparable jurisdictions and that the data does not provide an "apples to apples" comparison.

Discussion and Recommendation:

The points made by the Union are valid and must be considered.

While they are valid points, the job of a Fact Finder is to examine the criteria stated in the statute and the administrative rules. Comparability is one of those criteria.

In this case the combination of the PERS pick-up and this very generous benefit does raise an issue that the City has the right to attempt to change.

If the proposal attempted to remove this benefit from current bargaining unit members, this Fact Finder would opine that that there is too much of a loss involved.

But since the proposal is to be applied prospectively, the weight of the argument shifts in favor of the City. Even though two-tiered benefits require explanation for future employees, they are a valid way for the parties to make future adjustments in the fairest and least disruptive way possible.

I am not convinced that there is any need to change the "incapacitated" standard from 8 to 24 hours. In order to justify this change, the Employer would

have to first demonstrate that there is a sick leave abuse issue and second, that this change would be effective in helping to control it.

I fail to see any evidence of either.

I recommend the "incapacitated" language stay with the current contract and that management's proposal regarding future sick leave payouts be included in the new agreement effective November 1, 2006. Any employee hired into these bargaining units since bargaining began lacks the advance notice that their buy-out will differ from what has been in effect in the past. Thus, selecting a later date should ensure that all current employees are grand-personed.

The language of Article 21 (Service Unit Contract) should read:

21.1 A - Current language

21.1 B – Current language

21.1 B 1 - Editorial change to "his/***her*** immediate family"

21.1 B 2-4 And the additional concluding sentence should remain current language.

21.1 C & D – Current language

21.1 E Editorial change ~~21.3~~ ***21.4.***

21.1 F-K – Current language

21.2 "For persons employed by the Service Department on a full-time basis ***before November 1, 2006,*** and covered by this agreement…" (remainder of section 21.2 remains current language.)

21.3 ***Any full-time employee hired on or after November 1, 2006, with accumulated sick leave to his or her credit, who (1) retires from City employment and is eligible at the time of his or her separation from employment to receive retirement benefits and, (2) has ten (10) or more years of service with the state, any political subdivision, or any combination thereof; shall be paid at the time of retirement for twenty-five percent (25%) of the employee's accumulated sick leave at his or her hourly rate.***

Payments authorized by this section shall be limited to a maximum sick leave accumulation of 960 hours (25% of 960 = 240 maximum hours payable.) The aggregate value of accrued but unused sick leave credit that is paid shall not exceed, or all payments, the value of 240 hours of accrued but unused sick leave.

Employees whose separation from the City's service is the result of resignation or dismissal proceedings shall not be eligible for payment for accumulated sick leave under this provision.

Section 21.4 (previously 21.3) In any one (1) year, sick leave credits may be converted to cash under the following schedule ***for employees hired prior to November 1, 2006.***

Section 21.4 (parts 1-4) [previously 21.3 (parts 1-4)] Remain current language.

Section 21.5 (previously 21.4) – Current language.

The language for Article 15 (Clerical Unit) should read:

15.1 - Current language

15.2 – Current language

15.2 (1) Editorial change to "his/***her*** immediate family"

15.2 (2-4) And additional sentence should remain current language.

15.5 Editorial change ~~15.~~13 ***15.14.***

15.6 – 15.11 – Current language

15.12 "For persons employed by the City of Franklin on a full-time basis ***before November 1, 2006,*** and covered by this agreement, upon death or retirement every ***eligible*** employee shall receive full payment of up to one hundred fifty (150) days accumulated unused sick leave. Except for dismissal, if an employee terminates employment with the City for reasons other than death or retirement, he/***she*** shall be paid one (1) day's pay for each two (2) days of accumulated sick leave up to one hundred fifty (150) days.

15.13 ***Any full-time employee hired on or after November 1, 2006, with accumulated sick leave to his or her credit, who (1) retires from City employment and is eligible at the time of his or her separation from employment to receive retirement benefits and, (2) has ten (10) or more years of service with the state, any political subdivision, or any combination thereof; shall be paid at the time of retirement for twenty-five percent (25%) of the employee's accumulated sick lave at his or her hourly rate.***

Payments authorized by this section shall be limited to a maximum sick leave accumulation of 960 hours (25% of 960 = 240 maximum hours payable). The aggregate value of accrued but unused sick leave credit that is paid shall not exceed, or all payments, the value of 240 hours of accrued but unused sick leave.

Employees whose separation from the City's service is the result of resignation or dismissal proceedings shall not be eligible for payment for accumulated sick leave under this provision.

Section 15.14 (previously 15.13) In any one (1) year, sick leave credits may be converted to cash under the following schedule ***for employees hired prior to November 1, 2006.***

Section 15.14 (parts 1-4) [previously 15.13 (parts 1-4)] Remain current language.

Section 15.15 (previously 15.14) – Current language.

WAGES

Article 31 (Service Unit) – Article 23 (Clerical Unit)

Background:

The only issue open in these sections is the annual wage increase. The Employer has offered a 3% increase in 2006, 3% in 2007 and 3% in 2008.

According to the submission of the City, the Union has proposed 3.5% in 2006, 3.75% in 2007 and 4% in 2008.

The pre-hearing submission of the Union proposes a 4% increase in 2006 and a 5% increase in 2007 in the service unit.

The clerical unit union proposal in the same submission is for a 4% increase in 2006 and 4.5% increase in 2007.

Position of the Employer:

The Employer feels its offer is fair and adequate. It rejects the position of the Union for several reasons.

The Employer points to the recent history of wage increases in these units noting that the average annual increase since 2000 has been nearly 5.5%. These adjustments have made current wages competitive with comparable jurisdictions.

The Employer notes that the City offers the monetary benefit of picking up the employee's share of PERS. This will equal a 9% contribution in 2006, 9.5% in 2007 and 10% in 2008.

The Employer also argues that these bargaining units are the leader among comparable jurisdictions in the amount of holiday and personal time afforded to employees. Members of these units receive four (4) personal days and twelve (12) holidays per year.

Position of the Union:

The Union argues that the Franklin Police Department has agreed to a 3.75% increase in 2006 and a 4% in 2007 and the fire department has already agreed to a 4.5% increase in 2006.

Part-time firefighters had a raise approved by council that granted 3.5% increases in 2006, 3.25% in 2007 and 3% in 2008.

While the Union's submission did not include a 2008 proposal, discussion at the hearing indicated that there was no significant objection to a three year agreement.

Not surprising, the Union fails to concur with the Employer's selection of comparable jurisdictions.

The Union notes that there has been "no ability to pay argument" advanced in this jurisdiction.

The Union feels its salary proposals are fair when considering the internal comparables within the City of Franklin and the external comparables it submitted.

Recommendation:

It is apparent that the parties have attempted to do some significant wage adjustments in recent years.

It also appears to this neutral that salary is not the significant issue which has divided the parties in this round of negotiations.

Even though the proposal by the city of 3-3-3 is in the ballpark, it does appear that the evidence supports an amount somewhat larger.

A significant factor to take into consideration is the PERS pick-up which has an automatic escalating increase during the time period covered by this agreement.

Based upon consideration of the data presented, it is my recommendation that the following salary increases be incorporated in the collective bargaining agreements of both units.

Effective 1/1/2006 - increase of 3.25%

Effective 1/1/2007 - increase of 3.33%

Effective 1/1/2008 - increase of 3.00%

SUMMARY:

The Contract should be for a three year period commencing January 1, 2006, through December 31, 2008. All other parts of the Duration Article in both contracts should remain current language.

In this report I have attempted to consider and make recommendations regarding a number of complex issues. If errors are discovered or if any of the recommendations appear to the parties to be onerous to implement, I urge them to ***mutually agree*** (emphasis added) to alternate language consistent with the spirit of these recommendations.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in SERB Rule 4117-9-05(K), the Fact Finder recommends the provisions as listed herein.

In addition, all agreements previously reached by and between the parties and tentatively agreed to, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 3rd Day of November, 2006.

N. Eugene Brundige

N. Eugene Brundige,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finder's Report was served by electronic mail and regular US mail upon Brett A. Geary, (Employer Representative), Clemans, Nelson and Associates, Inc., 411 West Loveland Avenue, Suite 101, Loveland, Ohio 45140; and Susan D. Jansen, (Union Representative) Doll, Jansen & Ford, 111 West First Street, Dayton, Ohio 45402; and by regular U.S. Mail upon Edward E. Turner/ Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, this 3rd day of November, 2006.

N. Eugene Brundige

N. Eugene Brundige,
Fact Finder