

Before Louis V. Imundo, Jr., Fact Finder

STATE EMPLOYMENT  
RELATIONS BOARD

In the matter of fact finding between

2008 OCT -2 P 12: 53

City of Fairborn, Ohio

and the

Ohio Council and Fairborn Chapter of Local 101 American Federation of State, County  
and Municipal Employees, AFL-CIO

SERB Case No. 07-MED-12-<sup>1260</sup>~~1250~~

The Fact-Finder was jointly selected by the Parties.

This matter was heard before Louis V. Imundo, Jr., Fact Finder, in Fairborn, Ohio on  
September 11, 2008.

## **1.0 Introduction**

### **1.1 Appearing For The City**

- Brett A. Geary, Regional Manager, Clemans-Nelson & Associates
- Kelly E. Babcock, Account Manager, Clemans-Nelson & Associates
- Randall J. Groves, Finance Director
- Robert D. Sowers, Public Administrative Services Director
- Karen Hawkins, Utilities Superintendent

### **1.2 Appearing For The Union**

- Scott Thomason, Staff Representative
- David McIntosh, Staff Representative
- Erik Ross, Chapter Chair & Water Meter Service Worker
- Scott Schillito, Vice President & Maintenance
- Gary Adkins, Chief Steward & Operator I

## **2.0 Unresolved Issues**

**Article 8 – Promotions and Job Postings**

**Article 11 – Layoffs (including new addendum)**

**Article 14 – Wages (including Addendum #1)**

**Article 20 – Insurance (including Addendum #2)**

**Article 29 – Clothing, Section 29.01**

## **Article 32 - Duration**

### **New Addendum**

## **Article 8 – Promotions and Job Postings**

The current language in this Article reads:

“8.01 All promotions shall be made in accordance with the Personnel Rules and Regulations of the City of Fairborn, Ohio, and shall consider the knowledge, skills and abilities of the candidates for promotion on a fair and objective basis with due recognition being given to past job performance and seniority with the City.”

“8.02 Employees who have completed their respective probationary periods shall be eligible to compete for promotional positions within the classified service if they meet applicable test qualifications. Employees are eligible to transfer from one position to another in the same classification or pay grade for which the employee is qualified after completion of six (6) months of service in the position from which they are transferring.”

“8.03 When vacancies occur in positions represented by the bargaining unit and where no appropriate eligibility list exists, notice of such vacancies shall be posted on departmental bulletin boards. Such notices shall be posted not less than five (5) working days prior to the filling of such vacancy.”

Management wants to change the language in Section 8.02 that pertains to transfer and in so doing create a new Section 8.03. The current Section 8.03 would then become Section 8.04. The Union is willing to accept some changes in this language, but not the changes that Management is seeking.

Under the current language employees can transfer from their current position to another position in the same classification or pay grade for which they are qualified after they have completed six months of service in their current position. Management wants to delete the reference to pay grade. Management believes that a problem exists with respect to what the word qualified means. Management seeks to define the word qualified to mean that the transferring employee must meet all of the qualifications of the position that he/she wants to transfer into at the time of transfer. This includes licensure and certification(s).

The Union agrees to the idea of promotional testing and that transfers would be required to complete a 45 day probation period.

The record shows that the City's job descriptions for bargaining unit employees are not current. This can be a source of potential conflict not only with respect to transfers, but also to determining the correct pay grade for positions. However, even with up to date job descriptions disagreements can arise with respect to whether or not an employee who wishes to transfer from one position to another is qualified. It is for this reason that the typical practice in workplaces is to provide for a probationary period where the transferring employee meets the minimum qualifications for the job that he/she wants to transfer into.

In the Fact Finder's opinion, the City's job/position descriptions must be periodically updated to reflect to minimum qualifications. Changes in licensure and/or certifications must, as soon as practical, be incorporated into job/position descriptions.

The Fact Finder appreciates Management's concern, but, based on what is in the record, does not believe that the current language has caused any significant problems. The Fact Finder believes that updating job/position descriptions will reduce the likelihood of future problems. That said, the Fact Finder believes that revision of the current language will benefit both Parties.

The Fact Finder believes that Management's proposed change goes too far and would effectively choke off employees' ability to transfer. This could result in undesirable consequences for the City and employees. It has been well established that employees who have either burned out in their current jobs or who feel trapped in their current jobs are not the best performers. There is much to be said for employee loyalty and institutional knowledge gained over many years of service. When the transfer process is overly restrictive employees who want a change may opt to leave the City, or worse yet stay and become problem employees. Conversely, employees have the right to transfer without qualifiers can be disruptive and result in a myriad of undesirable consequences.

In the Fact Finder's opinion, unless the law requires that employees must hold certain licenses and/or certifications on day one in the job, employees should, depending upon the job, be given certain specified periods of time in which they must obtain licensure and/or certification in order to stay in the job.

In the Fact Finder's opinion, while pre-employment or pre-transfer testing is good in theory, it is problematic in practice. The biggest hurdles are test validity and reliability. In the Fact Finder's opinion, it would be burdensome and far too costly for the City to develop tests for all of the bargaining jobs that would, if challenged, successfully stand up to scrutiny either from courts or arbitrators. In cases where a standardized test exists, which is often the case where licensure and/or certification requirements exist, such tests should be used at the appropriate time. In the Fact Finder's opinion, if Management were to take it upon themselves to unilaterally develop qualifying tests for bargaining unit jobs, challenges to them are virtually guaranteed.

In the Fact Finder's opinion, absent standardized tests, any testing should be on the job by documenting employee performance over time. Employees who transfer into a new job must be able to safely and competently do required tasks within certain time lines. It is Management's responsibility to provide adequate training, be it formal and/or informal, monitor and document performance, and provide adequate feedback to employees. Employees must also know what is expected or required of them. In the Fact Finder's opinion, up to a specified number of days probation on the new job should be included in any change in the current language. In the Fact Finder's opinion, unless there is a compelling reason for an exception, the same probationary period should exist for all bargaining unit jobs. The probation period should be up to either 30 or 45 scheduled work days.

**Article 11 – Layoffs (including new addendum)**

The current language in Article 11, Section 11.01 reads:

“11.01 Whenever it becomes necessary for any reason to reduce the number of employees in any department, such reductions shall be made in accordance with the Personnel Rules and Regulations of the City of Fairborn, Ohio.”

Management and the Union recognize that the current language needs to be changed. They disagree on the form of the change. Management proposes that the entire Article be revised and employees can bump into the same or lower rated job for which they are qualified in the following manner:

- First, within their classification.
- Second, within their classification series group, including associated groups.
- Third, to any lower rated position, which they have previously held within the last 5 years and remain qualified.

Management's proposal included an addendum to the agreement specifically outlining the classification series and associated groups. Management defines “qualified” to mean that the employee meets all of the qualifications at the time of the layoff.

The Union proposes that an employee be allowed to bump into any position where:

- He/she has greater seniority than the employee that he/she is displacing.
- He/she is receiving equal or higher pay within the pay grade series that he/she is bumping into.
- He/she meets the minimum qualifications of the classification that he/she is bumping into.

In the Fact Finder's opinion, Section 4.6 – Resignations, Job Abolishments and Layoffs of the City's Personnel Rules and Regulations is too complex, costly to administer and

open to claims of unfairness and discrimination. Whatever language is ultimately agreed to by the Parties in the successor agreement it must be simple, understandable and easy to administer.

Layoffs can occur for a variety of reasons. Sometimes layoffs result in increased operational effectiveness and efficiency. Sometimes layoffs are necessitated because operating expenses are exceeding available funds.

At the Hearing Management repeatedly expressed the view that if a layoff were to occur it would be due to a financial exigency and that the situation would be made worse if time had to be spent training employees who had bumped into jobs that they were not fully qualified to do. The Union argued that under Management's proposed language junior employees could end up displacing more senior employees. Management, using the job groupings shown in their proposed addendum, asserted that such a result was very unlikely.

The Fact Finder recognizes that the bargaining unit contains a wide variety of jobs where, in some cases, the required knowledge, skills and job duties are so different that there is no transferability of knowledge and experience such between jobs. The Fact Finder finds merit in Management's proposed job groupings. The Fact Finder, with one exception, believes that Management's proposed layoff language be adopted. The exception is the definition of the word qualified. In the Fact Finder's opinion, it is unrealistic to expect that throughout the bargaining unit employees in a layoff situation will be able to meet all of the qualifications at the time of the layoff to bump into jobs where their seniority would allow them to do so. In the Fact Finder's opinion, employees who, in a layoff situation, wish to exercise their seniority rights to bump junior employees, must have any license(s) and/or certification(s) required by the law and be able to satisfy the minimum requirements of the job that they are bumping into.

#### **Article 14 – Wages**

Management proposed a 3¼ percent wage increase in 2008, effective January 1, 2008, 3 ¼ percent effective April 1, 2009 and a wage re-opener in year three.

The Union proposed a 3¼ percent wage increase effective April 1, 2008, 3½ percent effective April 1, 2009 and 3½ percent effective April 1, 2010.

The Fact Finder did a thorough review of the Parties' arguments and supporting data and recommends the following:

- 3¼ percent effective January 1, 2008
- 3¼ percent effective April 1, 2009
- Wage re-opener for 2010

In the Fact Finder's opinion, Management's offer is fair and competitive. Considering the City's projected finances for 2010 a wage re-opener is justified.

The current language in the third paragraph of Article 14, Section 14.01 reads:

"City further agrees that if any other bargaining unit members employed by the City receives a larger percentage raise than AFSCME bargaining unit members, AFSCME bargaining unit members will receive the percentage raise negotiated with that bargaining unit."

Management proposed that this provision not be carried over into the new agreement. Management's position was based on the belief that the City's four other units, all no strike units, may obtain unrealistic increases by advancing their negotiations to the statutory conciliation process, and AFSCME members would be "me too" beneficiaries. It was also Management's position that AFSCME bargains for its members, the City's other unions bargain for their members and the "me too" provision allows AFSCME bargaining unit members to get what amounts to a windfall whenever a no strike unit succeeds in getting a wage increase from a conciliator.

The Union proposed that the current language be carried over intact into the successor agreement. The Union asserted that the former City Manager believed that AFSCME bargaining unit members were valued assets to the City and that if, through conciliation no strike units received wage increases greater than those that AFSCME had bargained for its members, they should receive the same increase to prevent wage inequities.

The Fact Finder has long held the belief that all jobs are important or the jobs should be abolished and all employees are valued assets or their employers should not employ them. In the Fact Finder's opinion, if, as Management suggests, no strike units always profit by pushing negotiations to conciliation there would be many more conciliations in the State. In the Fact Finder's opinion Management did not provide substantive, credible evidence to support their position that conciliators are sympathetic to police and fire fighter units when it comes to granting demanded wage increases. In the Fact Finder's opinion, the Union bargained for its members when they secured this benefit and they are now being asked to give it up, something that amounts to a potential decrease in wages and could potentially result in wage inequities within the City. The Fact Finder believes that this language should be carried over into the new agreement.

**Section 14.03**

The current language in Section 14.03 reads:

"14.03 During the term of this Contract, the City shall maintain job descriptions for the job classifications set forth in Addendum #1 and copies of any such job description shall be made available to the Union. In the event the City amends existing or prepares new job descriptions, this matter shall become a matter for discussion between the parties."

In the Fact Finder's opinion, Management should have the sole authority to revise existing job descriptions and to create new jobs. If the Union believes that as a result of changing the job descriptions certain jobs are worth more money they can either by discussions with Management, formal negotiations, or the grievance procedure seek higher wage rates for those jobs.

#### **Section 14.05**

At the Hearing the Parties agreed to retain the current language.

#### **Section 14.06**

At the Hearing the parties agreed to retain the current language.

#### **Job Classification and Pay Grades**

The Parties proposed changes to the current Addendum. The Parties agreed to separate the Treatment Plant Operator I and II classifications into Water and Wastewater Treatment Plant Operator I and II. Management proposed leaving the new classification in the current pay grade. The Union proposed to move the Water Treatment Plant Operator I to a higher pay grade upon he/she obtaining the required license.

The Fact Finder, after considering the Parties' respective positions and supporting information, does not believe that the Union's position should be adopted. In the Fact Finder's opinion the current pay rate reflects the value of obtaining the license, which is required in order for the jobholder to keep his/her position.

Management proposed that the Shop Clerk position be deleted because there is no one currently in the classification and for the foreseeable future Management has no intention of staffing the job. The Union opposes the removal of this job classification.

In the Fact Finder's opinion, once a job classification is taken out of a bargaining unit it can be very difficult to get it back into the unit. In the Fact Finder's opinion, depending on how Shop Clerks' job description is written it may or may not belong in the defined bargaining unit.

In the Fact Finder's opinion, keeping this position in the bargaining unit protects the bargaining unit from the loss of a member if, at some point in the future, Management should decide to fill the position. Furthermore, Management suffers no harm if the Shop Clerk classification is kept in the bargaining unit.

Management proposed to add two new classifications at the highest bargaining unit pay grade (337/3337) for a Lead Operator position for the Waste and Wastewater operations. The genesis for the proposal was that the EPA requires these jobs. The Union agreed with Management. Management's proposal should be adopted.

### **Article 20 – Insurance**

Management proposed language that would provide the same health care benefits for bargaining unit employees that are provided to all other City employees. The Union proposed to increase the dental coverage from level II to level III at a cost of \$49.00 per month per employee. The Union further proposed that the City continue to provide a three tier plan.

*It is well documented that healthcare insurance providers are far more concerned about the price of their stock, stock options for executives, and their profit margins than they are about their responsibility to society at large and their customers. Healthcare insurance providers, far more out of greed than necessity, routinely raise their premiums. Smaller employers like the City are at the mercy of healthcare insurance providers because they are not large enough to have countervailing power to create a level of playing field when it comes to negotiating for healthcare coverage and premium costs for the City's employees. In the Fact Finder's opinion, Management needs to concurrently do two things. One is to proactively promote employee wellness programs. The other is to continually explore forming an alliance with other similarly situated cities for the purpose of jointly negotiating with healthcare insurance providers.*

In the Fact Finder's opinion, the City cannot afford the costs associated with bargaining with healthcare insurance providers for different plans for different bargaining units. Nor can the City afford the added costs of administering different plans. In the Fact Finder's opinion, all City employees should have the same healthcare insurance coverage and be under one policy. In the Fact Finder's opinion, Management should have the authority to change healthcare insurance providers during the life of the agreement, but any change in providers must not result in additional costs to employees nor should any change result in a dilution or decrease in benefits.

In the Fact Finder's opinion, Management's proposed language in its entirety should be adopted.

**Article 29 – Uniforms/Clothing**

The Parties agreed to increase the maximum allowance from \$300.00 to \$350.00.

**Article 32 – Duration**

Management proposed that the successor agreement become effective upon ratification by the Parties and remain in effect through March 31, 2011 with a wage re-opener in the third year. The Union proposed a three year agreement.

In the Fact Finder's opinion the Parties cannot afford to have a two year agreement because of the expenses associated with preparing for and conducting negotiations.

The Fact Finder recommends a three year agreement effective 12:01 a.m. March 29, 2008.

**New**

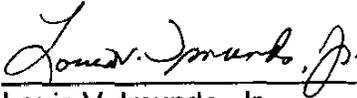
The Union proposed that when an unlicensed operator in the Water Treatment Plant obtains his/her Class I license he/she would go from pay grade 334 to 335. Management opposed this proposal.

In the Fact Finder's opinion, as previously stated, the obtaining of the license is a job requirement and if a job holder is unable to do so within the required time frame he/she can not remain in the classification. In the Fact Finder's opinion the Union did not provide sufficient information to show that the additional increase in wages is warranted. The Fact finder recommends that the Union's proposal not be adopted.

The Fact Finder recommends that all of the tentative agreements, which includes language agreed to at the Hearing be memorialized in the new agreement.

October 1, 2008

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Date

  
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Louis V. Imundo, Jr.  
Fact Finder