

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**May 10, 2010**

**In the Matter of the Fact Finding Between**

<b>CITY OF RICHMOND HEIGHTS, OHIO</b>	)	<b>CASE NO. 09-MED-09-0863</b>
	)	
<b>AND</b>	)	<b>FINDINGS</b>
	)	<b>AND</b>
<b>MUNICIPAL FOREMEN AND LABORERS' UNION, LOCAL NO. 1099</b>	)	<b>RECOMMENDATIONS</b>
	)	

**MELVIN E. FEINBERG, FACT FINDER**

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**APPEARANCES**

**FOR THE EMPLOYER:**

**Marc J. Bloch  
Walter & Haverfield LLP**

**Attorney for the City of Richmond  
Heights**

**Lynda S. Rossiter**

**Director of Finance for the City of  
Richmond Heights**

**FOR THE UNION:**

**Joseph J. Guarino III  
Mangano Law Offices Co., LPA**

**Attorney for the Municipal Foremen and  
Laborers' Union, Local No. 1099**

**Paul Wells**

**President and Business Manager of the  
Municipal Foremen and Laborers' Union,  
Local No. 1099**

## **SUBMISSION**

This matter concerns the fact-finding proceeding between the City of Richmond Heights, Ohio, herein also referred to as the Employer or the City, and the Municipal Foremen and Laborers' Union, Local No. 1099, herein also referred to as the Union. The State Employment Relations Board, herein also referred to as SERB, duly appointed the undersigned as Fact Finder in this matter by letter dated March 4, 2010.

Prior to the fact-finding proceeding, the Parties engaged in many negotiating sessions and reached tentative agreement on most of the Articles of the proposed new collective bargaining agreement.

The fact-finding proceeding was held on April 16, 2010, in accordance with the mutual agreement of the Parties. Prior to the fact-finding hearing, in accordance with SERB rules, the Parties filed complete position statements with the Fact Finder. The proceeding was conducted pursuant to the rules and regulations of SERB. Mediation of the outstanding issues was attempted, and this report contains the recommendations on those remaining issues.

## **BACKGROUND**

The Employer recognizes the Union as the sole and exclusive bargaining representative of the "bargaining unit" consisting of approximately six (6) regular full-time employees of its Service Department in the following unit classifications:

- A. Class A – Mechanic
- B. Equipment operator/laborer
- C. Custodial worker
- D. Janitor/Clerical
- E. Working Foremen

The Parties' most recent Collective Bargaining Agreement, herein also known as the Contract, was in effect from January 1, 2007 through December 31, 2009 and was extended thereafter, pursuant to their agreement, pending negotiations for a successor agreement.

The Parties stipulated that the language of all provisions of their 2007-2009 Contract shall remain unchanged in any new agreement, with the exception of those matters at issue which are addressed in the recommendations by the Fact Finder in this report. They have also agreed to accept delivery of the Findings and Recommendations in this matter on the day of issuance by e-mail and/or by fax.

#### **CRITERIA**

The Fact Finder, in making his recommendations, has been guided by the stipulated agreements reached by the Parties on various matters, by the Parties' discussions and presentations on the issues, by evidence presented during the proceeding, and by the following factors set forth in various Ohio Revised Code provisions, including O.R.C. § 4117.14 (C) (4) (e) and (G) (6) (7) (a) - (f) and Ohio Administrative Code § 4117-9-05 (J) (K):

- (1) Past collectively bargained agreements, if any, between the parties;
- (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 interests and welfare of the public, the ability of the public employer to finance and administer the issues involved, and the effect of the adjustments on the normal standard 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

After considering the above criteria, the following are the Fact Finder's recommendations for those remaining outstanding issues between the Parties, which consist of **(1) Duration, (2) Wages, (3) Reopener, and (4) Health Insurance:**

### **RECOMMENDATIONS**

The Parties have agreed in writing to waive a stated rationale for the Fact Finder's recommendations, inasmuch as time is of the essence.

It is the recommendation of the Fact Finder that the following language be incorporated into the proposed Contract as an additional Memorandum of Understanding, and that its language shall supersede any language dealing with the same issues which may be contained in the Articles of the proposed Contract:

**Memorandum of Understanding  
Between  
The City of Richmond Heights, Ohio,  
and  
The Municipal Foremen and Laborers' Union, Local No. 1099**

1. **Duration.** Three years: January 1, 2010 through December 31, 2012.
2. **Wages.** First year (2010) wage freeze.
3. **Reopener.** In place of the current language in Section 1 of the March 19, 2010 Memorandum of Understanding, the following language should be substituted:
  - (a) For the period from January 1, 2010 through December 31, 2010, bargaining unit employees shall continue to work a thirty-five (35) hour work week as opposed to a forty (40) hour work week and shall be paid based upon a thirty-five (35) hour work week. This thirty-five (35) hour work week shall mean that bargaining unit employees shall work six and one-half (6½) hours per day with one-half (½) paid time for break(s).
  - (b) For the period from the date of ratification and on a nonprecedential basis through December 31, 2010, in the event the City, in its discretion, decides layoffs in the Service Division are appropriate, the City shall first lay off all seasonal part-time Service Department employees, then regular part-time employees, prior to laying off any full-time bargaining unit employees. Notwithstanding, the City may lay off a bargaining unit

employee for lack of work, prior to laying off a regular part-time employee in the Service Division upon the following conditions being satisfied:

- (1) The regular part-time employee has the skill, ability, expertise, certifications, and licenses to perform all work, including, but not limited to, the duties, tasks, assignments, and functions of the bargaining unit employee he/she has been retained in lieu of; and
- (2) The City has not hired additional regular part-time employees in the Service Department.

(c) However, in the event of a layoff that affects a bargaining unit employee for the period from the date of ratification through December 31, 2010, the City and the Union shall enter into immediate negotiations for the remainder of the collective bargaining agreement and revert to a forty (40) hour work week.

4. **Health Insurance.** Effective July 1, 2010, employees shall be responsible for paying, depending on their family status, either \$500.00 of the \$4,000.00 family Health Savings Account or \$250.00 of the \$2,000.00 single Health Savings Account.

City of Richmond Heights, Ohio

Municipal Foremen and Laborers'  
Union, Local 1099

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Print Name and Title)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

Date: \_\_\_\_\_

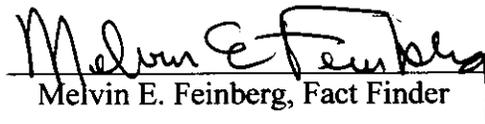
**CONCLUSION**

In conclusion, the undersigned Fact Finder hereby submits the above recommendations on the outstanding issues presented in this matter and incorporates by reference into these recommendations all other tentative agreements reached by the Parties on all Articles of the proposed Contract.

Respectfully submitted and issued on the date set forth below:

Cuyahoga County, Ohio

May 10, 2010  
(Date)

  
Melvin E. Feinberg, Fact Finder

## CERTIFICATE OF SERVICE

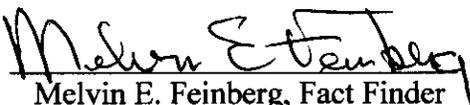
I hereby certify that one copy of my Fact-Finding Report in SERB Case No. 09-MED-09-0863, City of Richmond Heights, Ohio, and Municipal Foremen and Laborers' Union, Local No.1099 is being sent by fax and by e-mail to the following Parties on the date set forth below:

1. Marc J. Bloch, Attorney for Richmond Heights  
Walter & Haverfield LLP  
The Tower at Erieview  
1301 East Ninth Street, Suite 3500  
Cleveland, OH 44114-1821  
[mbloch@walterhav.com](mailto:mbloch@walterhav.com)  
Fax: 216.916.2435
  
2. Joseph Guarino III  
Mangano Law Offices Co., LPA  
2245 Warrensville Center Road, Ste. 213  
Cleveland, OH 44118  
[jguarino@bmanganolaw.com](mailto:jguarino@bmanganolaw.com)  
Fax: 216.397.5845

I also certify that on the same date set forth below a copy of my Findings and Recommendations is being sent to SERB by regular U.S.P.S. mail at the following address:

J. Russell Keith, Administrator  
Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, OH 43215-4213

May 10, 2010  
Date

  
Melvin E. Feinberg, Fact Finder

Melvin E. Feinberg, Esq.  
Arbitrator, Mediator, Fact Finder

5247 Wilson Mills Road, #342  
Richmond Heights, Ohio 44143

(216) 291-2876 Fax: (216) 297-1385  
E-mail: [mefeinbergarb@yahoo.com](mailto:mefeinbergarb@yahoo.com)

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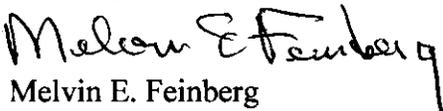
J. Russell Keith, Administrator  
Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, OH 43215-4213

RE: SERB Case No. 09-MED-09-0863  
Findings and Recommendations in Richmond Heights and Municipal Foremen  
and Laborers' Union, Local No. 1099

Sir:

Enclosed please find a copy of my Findings and Recommendations in the above case  
issued on May 10, 2010.

Sincerely,

  
Melvin E. Feinberg

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