

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF FACT FINDING**

Between

**The City of Parma
and**

**United Steel, Paper and Forestry, Rubber, Manufacturing, Allied
Industrial and Service Workers International Union (FKA Pacific
International Union) on behalf of its Local I-7001 (FKA 5-7001)**

SERB Case # 10-MED-01-0078

Hearing date: October 20, 2010-E. William Lewis, Fact Finder

STATE EMPLOYMENT
RELATIONS BOARD
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Fact Finder's Findings and Recommendations

Appearances:

For the Union:

James Porcaro, Esq.
Schwarzwald McNair & Fusco
616 Penton Media Bldg.
1300 East Ninth Street
Cleveland, Ohio 44114

For the Employer:

Gary C. Johnson, Esq.
Johnson, Miller & Schmitz
635 West Lakeside Ave., Suite 600
Cleveland, Ohio 44114

Mr. Thomas Zidek, Staff Representative
United Steelworkers of America
2511 Miles Rd., Suite H
Warrensville, Ohio 44128

AUTHORITY

This matter was brought before Fact Finder E. William Lewis, in Keeping with applicable provisions of the Ohio Revised Code 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of Ohio Revised Code 4117.

BACKGROUND:

The City of Parma, hereinafter known as the Employer/City, provides municipal services to its approximately 83,000 citizens. The United Steel, Paper and Forestry, Rubber, Manufacturing, Allied Industrial and Service Workers International Union(FKA PACE International Union) and its Local I-7001, hereinafter known as the Union, represents approximately 84 bargaining unit employees. The classifications included in the unit are: all full-time laborers, automotive mechanic I, automotive mechanic II, fire hydrant mechanics, truck driver, special equipment operator, hydrant operator, painter, traffic light technician, sign painter I, sign painter II, service center personnel, and parts expediter.

This is a successor agreement to a CBA that expired on March 31, 2009. The parties commenced bargaining prior to its expiration, but due to serious Employer economic conditions, and representation changes, delays occurred. A petition was made to SERB for a Fact Finder appointment, and this Fact Finder was appointed on April 12, 2010.

By mutual agreement, the parties agreed to meet with the fact finder for mediation purposes, on July 22, 2010. Mediation sessions were also held on August 9, 10, and October 8, resulting in two tentative agreements. Since a contract was not ratified, a Fact Finding Hearing was scheduled for October 20, 2010.

In accordance with the Ohio Revised Code, Section 4117.14(C)(4)(e), in making these recommendations, the Fact Finder takes into consideration the following factors:

- (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 interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustment 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

THE HEARING:

The parties complied with their pre-submittal statutory requirements, listing numerous open issues for the Evidentiary Hearing. At the commencement of the Hearing, the parties were asked if some modifications to their previous agreements might be in order, rather than digressing to some of their unresolved old proposals. They mutually agreed to attempt mediation of some of their previous agreements, and were able to agree to some modifications to their previous agreements. We are in hard times and the fact-finder commends the parties for their willingness and efforts to address the current economic situation.

The parties mutually agreed to waive a full and formal Evidentiary Hearing, and authorized the fact-finder to issue a Report based on the parties' written submissions and the evidence submitted during the parties' mediation sessions.

The following are the unresolved issues and positions discussed with the fact-finder, and my recommendations. All tentative agreements are hereby incorporated and made part of this recommendation.

ARTICLE XII CONFORMITY TO LAW

Employer and Union Position: Move last sentence of Article XXVI, Section 26.1 to Section 12.2 of Article XII.

Fact Finder recommendation: Section 12.2-New last sentence to read as follow:

In such event, the Employer and the Union will, at the request of either party hereto, promptly enter into negotiations relative to the particular provision deemed invalid or unenforceable.

ARTICLE XIV GRIEVANCE PROCEDURE

Section 14.3 (f)

Employer Position: Delete Civil Service Commission

Union Position: Current language

Fact Finder recommendation: Change to read as follows:

The Civil Service Commission is to be used only for discharge challenges until March 30, 2011. Effective March 31, 2011, disputes involving disciplinary action, including termination, are subject to appeal only through this grievance and arbitration procedure.

Section 14.3 (i)

Employer Position: Add to the 1st sentence: or the Employer appeals the decision

Union Position: Current language

Fact Finder recommendation: Change 1st sentence to read as follows:

The City agrees to implement any grievance awards within thirty (30) days unless the parties agree to extend that time or a party appeals the decision.

Section 14.4 (b) Steps-1, 2, &3

Employer's and Union's Position: Clarify and set time limits

Fact Finder recommendation:

Step 1: change to read as follows: An employee who believes he may have a grievance shall notify the Public Works Coordinator or designee of the

possible grievance within five (5) calendar days of the occurrence of the facts giving rise to the grievance. The Public Works Coordinator or designee shall have five calendar days to schedule a meeting with the grievant and a member of the local Union Board with the objective of resolving the matter.

Step 2: Change last sentence to read as follows: The Director of Public Service shall hold a meeting within fifteen (15) calendar days and give his answer in writing within fifteen (15) calendar days.

Step 3: Add “calendar” to days in this Step 3

ARTICLE XV ARBITRATION PROCEDURE

Section 15.1

Employer Position: Delete FMCS and select a panel of Arbitrators

Union Position: Current Language

Fact Finder recommendation: Change to read as follows:

In the event a grievance is unresolved after being processed through all steps of the Grievance Procedure, unless mutually waived, then within thirty (30) calendar days after the rendering of the decision at Step 3, the Union may submit the grievance to arbitration. If such agreement is not reached, the parties will promptly select an arbitrator from the panel of arbitrators herein contained and choose one by the alternative strike method.

Section 15.7

Employer and Union Position the same, in accordance with **Section 15.1**.

Fact Finder recommendation: Change to read as follows:

There is hereby created a permanent panel of arbitrators for the selection of arbitrators. Those arbitrators on the panel are as follows: 1) _____
2) _____:3) _____:4) _____ and. 5) _____

ARTICLE XVI SICK LEAVE

Section 16.2

Employer Position: Delete

Union Position: Current language

Fact Finder recommendation: New last sentence to be added and to read as follows:

The two (2) for one (1) sick leave buy-back will not be paid out (cashed out) effective August 1, 2010 until March 31, 2011, or an agreement on a successor Agreement is reached, which ever is later.

Section 16.9

Employer Position: delete

Union Position: current language

Fact Finder recommendation: Add new last sentence to read as follows:

Effective August 1, 2010, the sick leave bonus attendance award that is awarded quarterly shall not be paid (cashed out) during the term of this Agreement or until a successor Agreement is reached, whichever is later.

(The Roman Numerals became inaccurate at ARTICLE XXIII (XXII))

ARTICLE XXVII SENIORITY

Section 27.3

Employer Position: use reduced hours or furlough days

Union Position: Furlough days and not reduced hours

Fact Finder recommendation: Add the following language:

The Employer may utilize unpaid furlough days of up to 18 per calendar year in lieu of an hours reduction or layoff at its discretion. If furlough days are utilized, they shall be implemented so that staffing needs of the Employer are met. Furlough days shall be equally distributed between employees and distributed throughout the year.

ARTICLE XXXVII DURATION

Section 37.1

Employer and Union Position: Per Tentative Agreement

Fact Finder recommendation: per TA-- to read as follows:

This Agreement represents the complete Agreement on all matters subject to bargaining between the City and the Union and except as otherwise noted herein shall remain in full force and effect from April 1, 2009 through March 31, 2011, with existing wage rates continuing as provided in the previous Agreement which expired on March 31, 2009.

Memorandum of Understanding October 20, 2010

In accordance with the mediation tentative agreement, the following was agreed to by the Employer and Union:

All grievances relating to the reduction in hours in September 2009 and the reduction in leave and pay benefits shall be submitted to expedited arbitration with one of the following arbitrators hearing the matter, depending on earliest availability; Robert Stein, James Mancini, Dennis Minnie or David Pincus. All grievances relating to the hours reduction and reduction in leave and pay benefits, effective in September 2010, are withdrawn with prejudice, including any and all unfair labor practice charges (ULP) presently filed with the State Employment Relations Board (SERB).

SUMMARY

The Fact Finding recommendations contained herein were arrived at giving consideration to the positions of and arguments of the parties, our mediation discussions, and the Criteria enumerated in ORC 4117.14(C)(4)(e). In addition, I also incorporate by reference into this Report, the tentative agreements of the parties reached through negotiations, and the language of the expired Agreement which remains unchanged by the parties.

This concludes the Fact Finding Report.

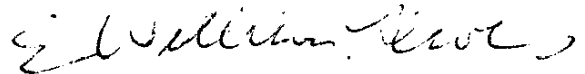
Respectfully submitted and issued at Columbus, Ohio this 11th day of November 2010.

A handwritten signature in cursive script that reads "E. William Lewis".

E. William Lewis
Fact Finder

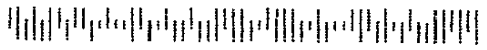
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finder's Report was served by overnight delivery upon Gary C. Johnson, Esq., for the City of Parma, 635 West Lakeside Ave., Suite 600, Cleveland, Ohio 44114; and James Porcaro, Esq., For the Union, 616 Penton Media Bldg., 1300 East Ninth St., Cleveland, Ohio 44114; and by regular U. S. Mail to J. Russell Keith, Assistant Executive Director, State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215, this 11th day of November, 2010.



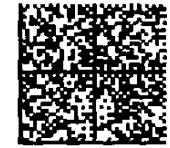
E. William Lewis
Fact Finder

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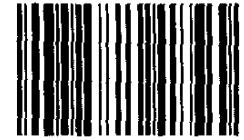
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