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STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between

Teamsters Local No. 92

Employee Organization

Case Nos. 11-MED-09-1334

And

Stark-Tuscarawas-Wayne
Joint Solid Waste Management District

Fact-Finder: Jerry B. Sellman
Date of Report: March 5, 2012

The Employer

FACT-FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Susan D. Jansen, Esq. – Attorney with Doll, Jansen & Ford, representing the Union

FOR THE EMPLOYER:

Robin L. Bell – Regional Manager, Clemans, Nelson & Associates, Inc. representing the Employer.

INTRODUCTION

This matter concerns a Fact-finding proceeding between the Stark-Tuscarawas-Wayne Joint Solid Waste Management District (hereinafter referred to as the “Employer” of the “District”) and Teamsters Local 92 (hereinafter referred to as the “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-Finder in this matter. A Fact-finding hearing was held on February 10, 2012, at which time the Fact-Finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. The Parties were unable to find consensus on one major issue and the hearing commenced.

The open issues identified by both parties included:

1. Article 30 Wages

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-Finder provided the parties the opportunity to present arguments and evidence in support of their respective positions on the issues remaining for this Fact-finder’s consideration. The parties waived the taking of a transcript.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issue before him and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

(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 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 issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

I. BACKGROUND

Teamsters Local 92 is the exclusive representative of all full-time and regular part-time drivers/operators of the Stark- Tuscarawas-Wayne Joint Solid Waste Management District. The parties reached their first Agreement partly as a result of the award of Fact-Finder Robert G. Stein who addressed the sole issue of wages in his report issued March 3, 2009. The sole issue before this Fact-Finder is also wages. Currently there are six (6) full-time bargaining unit employees and one part-time employee. The current Agreement of the parties has effective dates of July 16, 2009 through October 31, 2011.

In 1980, the County Commissioners of the Stark, Tuscarawas, and Wayne Counties entered into a multi-county waste disposal agreement which established the three counties as a multi-county joint waste disposal agency. In June, 1988 Ohio law required all of Ohio's 88 counties to form solid waste management districts, either individually or in conjunction with other boards of county commissioners. In compliance with the law, the Boards of County Commissioners of Stark, Tuscarawas, and Wayne Counties formed the Start-Tuscarawas-Wayne Joint Solid Waste Management District on November 28, 1988. However, despite the fact the District was formed, it was not until January 1, 2008, that operational changes took place so that the District began to operate as one joint District. The separate organizations became consolidated with all the employees operating under a single organization. The employees of the three (3) separate counties came together under one employer. Four of the original drivers, including one part-time driver, were previously employed by Stark County and one driver was previously employed by Wayne County.

According to the District's website, the District's mission is to "assure safe and sanitary disposal of solid waste for district residents and to reduce reusable or renewable wastes from entering landfills within the District." The District proposes to accomplish this mission "through the development of residential and industrial programs that educate, promote, provide, implement, and improve recycling opportunities that will preserve landfill space." After the consolidation, the District employed the consulting firm of Ray & Barney Group to develop a workforce and compensation analysis of the District to examine positions within the organization and to assist the District in determining how to operate under the combined structure. This document was published on May 1, 2008, and is referred to as the "Workforce and Compensation Analysis".

In performing its Workforce and Compensation Analysis, the consultants noted that there were some unique qualities and innovations in the District that set it apart from other comparable districts. The consultants noted that the District was unique in that it operates its recycling program 365 days a year from 5:00 A.M. to 12:00 A.M., longer than most because the recycling programs are owned and operated by the District. The study found that the District was one of the larger organizations of its kind in Ohio with an $11,000,000.00 operating budget in 2008. Much of the District's revenue comes from tipping fees. The tipping fee is the revenue the District receives from tiered solid waste disposal fees which are levied in accordance with R.C.

3734.57(B). The amount of the tipping fee depends upon where the solid waste comes from which is then disposed of in the District's landfills. The report found that the District was also unique in that it manages three (3) active landfills, which are more than any other authority in Ohio.

The report found that the District's population in the Tri-County Region made it one of the largest districts in Ohio. The report noted that the District takes in approximately 20% of the State's trash, which is much more than any other organization. In 2005, the District took in 3,553,055 tons of trash and since the District's inception, it has taken in over 26 million tons of trash from outside the District and 16 million tons from within.

In 2011, the District collected $752,534.57 in fees from solid waste disposed in the District's landfills collected from within the District, $2,108,870.22 in fees from solid waste collected from outside the District and disposed in the District's landfills, and $76,600.66 in fees from waste collected from outside the State and disposed in the District's landfills for a total of $2,938,005 in tipping fees.[1] Revenues from recycling in 2011 were $358,494, up from prior years, but the expense of collecting the recycling was considerably higher at $850,741. The District reported total tipping fee fund revenues at $3,200,527 with total tipping fee expenses of $2,728,230. This was an improvement over the consistent losses over the previous three years. See graph below.

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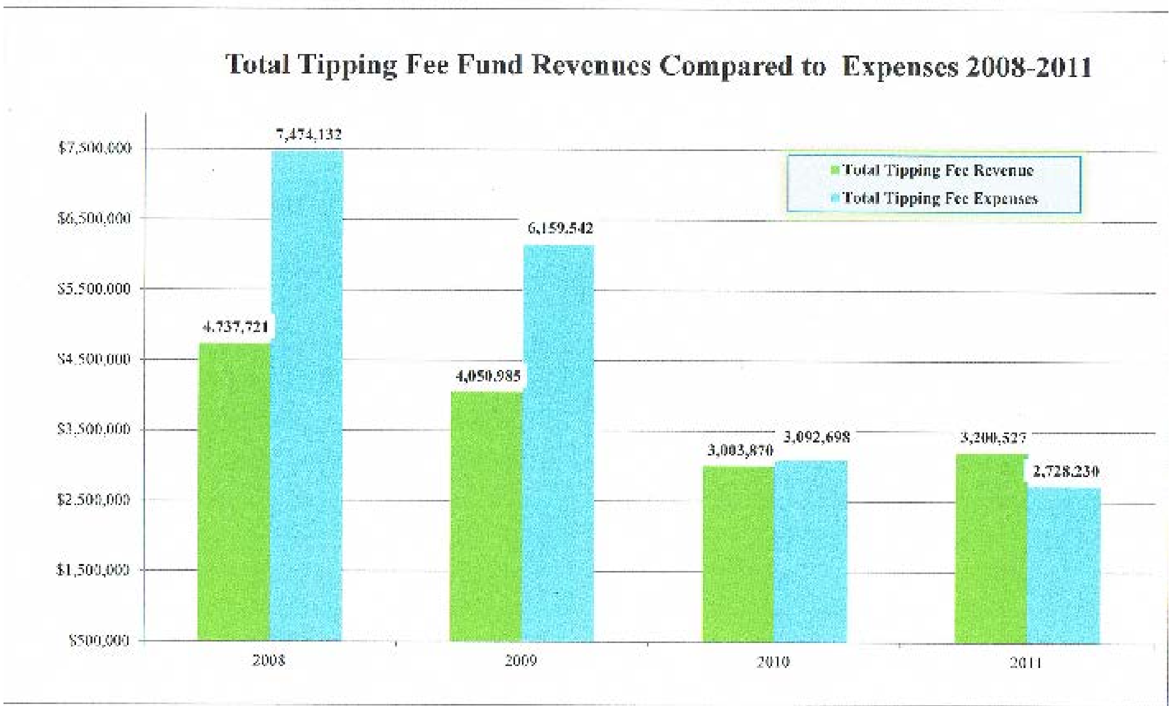
[1] Evidence presented by the District at the hearing indicated that the District Tipping Fee Revenue for 2011 was



Prior to entering into the parties first Agreement, the employees' wages were scattered with some inconsistency between years of service and wage rate. When the employees of the three counties were brought together, there was a pay disparity between the wages of the employees and their years of service. This disparity was recognized by all parties. In recommending a wage rate during the finalization of the last contract, Fact-Finder Stein recommended a new pay scale with a range from $13.50 per hour to $18.50 per hour. In the first year of that Agreement, two (2) employees who were below the pay range received a $1.47 per hour increase when their pay was increased to the range minimum. Another employee also received a $.21 inequity adjustment. Fact-Finder Stein then recommended that the lower end of the pay range and each employee in the range would receive a 2.5% increase each year of the Agreement retroactive to January 3, 2009. If the employee reached the top of the pay range, the employee received the pay increase which put him/her at the top of the pay range. If the

$2,713,314.

employee did not receive the full percentage of the scheduled 2.5% increase, the employee received a lump sum payment which represented the balance of the 2.5% increase each year of the Agreement. One employee in the second year of the Agreement reached the top of the pay scale and received a $614.00 lump sum in the second year and a $961.00 lump sum in the third year. The remainder of the employees is still within the pay scale.

UNRESOLVED ISSUE

1. ARTICLE 30– WAGES

The Union's Position

The Union proposes a two percent (2%) increase to the employees' base rate of pay in the first year of the Agreement effective January, 2012 and an additional two and one-half percent (2.5%) increase to the base rate of pay in year two and three of the Agreement.

The Union argues that its proposal is reasonable in light of the wages paid other CDL truck drivers in the area. The average base pay *entry* rate among truck drivers with CDL licenses working for the Guernsey, Jefferson, Meigs, Monroe, Morgan Portage and Trumbull Engineers Offices is $16.15 per hour, compared to the average entry level rate of $14.05 for the bargaining unit employees. This rate is 15% less than the average wage in comparable jurisdictions. The top rate of pay in these comparable jurisdictions is $17.96 per hour and compared to $16.52 for this bargaining unit. This is 8.7% less than average wage rate in those jurisdictions.

The Employer's Position

The Employer proposes a three year wage freeze.

While the Solid Waste Management Advisory Council, composed of the Boards of County Commissioners of the participating counties, recognize the bargaining unit employees deserve some increase, those increases cannot be justified in light of the losses suffered by the

District over the last several years, the economic conditions that exist in each of the participating counties and the wages paid to other public employees within these jurisdictions.

While the District was able to reverse years of losses in operating the landfill, the forecast for revenues is one of a stable nature rather than increases. While revenues were up in 2011, they still were $1.5M less than in 2008. The District is still trying to recover from steady losses since inception.

The counties of Stark, Tuscarawas and Wayne have had several years of high unemployment, decreased revenues and increased expenses. As a result of the budget passed last year by the Ohio legislature, all of the counties are receiving significantly less revenue from the State. These factors make it impossible to increase wages of employees working for the counties. The counties have sought wage freezes on behalf of their employees and it is neither economically feasible nor practical to increase the wages of these employees.

The wages of these employees were increased over the last several years, so it is not as if they have not had any increases. When the hourly wage of these employees is compared to those of Driver/Operators in Lucas, Portage, Jefferson-Belmont, Athens-Hocking and Richland, the drivers are paid a higher average wage. The average minimum wage paid in those counties is $13.47 compared to the average rate of $13.92 paid the bargaining unit members. The maximum hourly wage paid in comparable counties is $17.41 compared to the average wage rate of $19.00 to these bargaining unit employees. There is no justification for any increase.

Finally, it is not in the public's best interest to increase wages to this bargaining unit when the wages of other employees in the counties participating in the District are not receiving the benefit of increased wages due to each of the counties' economic struggles. This is not to say that the drivers do not do a good job or are not dependable, for they do a great job and are dependable. Nonetheless, the County Commissioners must hold wages steady until the economic condition of their jurisdictions improve.

Discussion, Findings and Recommendation

A determination of the appropriate wage rate for members of this bargaining unit and the ability of the District to pay those wages requires an examination of unique circumstances. First, the District provides services for multiple counties and, while operated under the direction of an Executive Director, its services and operating budgets are determined by representatives of the various member counties who ultimately define the level of service provided. While the District imposes tipping fees to generate revenues, it does not have any ability to impose taxes to meet rising expenses, so the participating counties need to make up any shortfalls.

Second, while the comparable or market wage rate for truck drivers in this bargaining unit is a factor to be considered in the wage determination, neither the wages of drivers working for nearby county engineers nor driver/operators in other Ohio counties should be entirely used as a traditional comparable wages of other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved. Since the bargaining unit employees are performing work that has been consolidated in the multiple, contiguous county area, there are no wages of other drivers working for a landfill in the region to compare. These drivers are CDL drivers, however, and rates paid to other CDL drivers in the area are to be taken into consideration.

Third, each of the member entities has to deal with their own jurisdictional budgets and, in a declining or stagnant economy, obtaining a consensus from all the members is a challenge when they are dealing with loss of revenue and budget cuts on their own turf. If revenue increases are not supported, the Executive Director of the District is faced with balancing the budget, which usually results in layoffs.

Under the above unique circumstances, balancing the interest and welfare of the public with the ability of the public employer to finance and administer the issues proposed in light of wages paid relative to the employees in the bargaining unit with those to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved becomes less straightforward.

Notwithstanding prior years' deficit spending by the District and challenging economic times faced by Stark, Tuscarawas and Wayne Counties, the District has continued to operate and provide services to the citizens of those communities.

During uncertain economic times, wage increases should be carefully examined. Here, the evidence demonstrates that the bargaining unit members are deserving of an increase in wages, in light of the wages paid to other employees doing comparable work, but any increases must be given in light of the slight increase in revenues for 2011 and the declining revenues that existed since 2008. Entry level bargaining unit employees do make less than comparable CDL truck drivers in the area and the Union's presentation of comparable are more realistic than those presented by the Employer.

The position of the Employer that wage should be frozen for the next three years is not justified in light of the improvement in the District's revenues, decrease in the District's expenses and the wage rate currently being paid. Nonetheless, the amount of increase sought by the Union is not justified in light of the current economic condition of counties and an unforeseen future.

Based upon the economic factors presented, the current wages of the bargaining unit members relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work as cited, giving consideration to factors peculiar to the area and classification involved, the interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed under the structure of District herein, and the effect of the adjustments on the normal standard of public service, my recommendation is for a one percent (1%) increase in year one, a two percent (2%) increase in year two and a two percent (2%) in year three of the Agreement.

The Fact-Finder would also note that at the time the bargaining unit was created, one of the drivers was already at the maximum wage rate ($18.00 per hour) and any increase was to be paid in a lump sum payment each contract year in order not to increase the base wage rate at the maximum level. The Fact-Finder finds this formula to be appropriate in this case also, for those drivers being paid at the maximum rate are being paid comparable wages and any increase should be in the form of a lump payment so as not to increase the base pay rate over the three year period of the contract, but at the same time give the effected employee the benefit of the increase in wages herein.

RECOMMENDATION

It is recommended that wages of all current bargaining unit employees shall be increased one percent (1%) in the first year of the Agreement, two percent (2%) in the second year of the agreement and two percent (2%) in the third year of the Agreement. The maximum rate paid to any employee shall not exceed the maximum rate of $18.00 per hour. To the extent an employee's wage rate is at $18.00 per hour, such affected employee(s) shall receive a lump sum payment each year equal to the increases recommended herein. Lump sum payments shall be paid no later than the third payroll of

each year in the year that they are due.

CONCLUSION

In conclusion, this Fact-finder hereby submits the above referenced recommendation on the outstanding issue presented to him for his consideration. Further, the Fact-finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the Parties' Final Agreement.

March 5, 2012

Jerry B. Sellman

JERRY B. SELLMAN, FACT- FINDER

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the Fact-finder's Report was sent by E-mail on March 5, 2012 to:

SERB
Mary E. Laurent
Administrative Assistant
65 E. State Street
Columbus, OH 43215
mary.laurent@serb.state.oh.us

Susan D. Jansen
Doll, Jansen, Ford & Rakay
111 W. First Street, Suite 1100
Dayton, OH 45402
sjansen@djflawfirm.com

Robin L. Bell. Regional Manager
Clemans, Nelson & Associates, Inc.
2351 South Arlington Road. Suite A
Akron. Ohio 44319
rbell@clemansnelson.com

Jerry B. Sellman