

STATE EMPLOYMENT RELATIONS BOARD
STATE EMPLOYMENT RELATIONS BOARD
Fact-Finding Case No. 11-MED-10-1386 1398

2012 MAY 11 P 12: 23

Civil Service Personnel Association, Inc.
Union

And

Fact-Finding and Recommendations
Burt W. Griffin, Fact-Finder

The City of Akron
Employer

This matter was heard on Wednesday, May 3, 2012 at the Akron City Hall.

Findings of Fact. The parties have previously reached agreement on all but one issue—payment for the time of the local union president when he/she is excused from work responsibilities to the Employer in order to perform Union functions.

Payments for such activities are now prescribe under Article XIII of the collective bargaining agreement. The present Agreement states:

- 1) *The President of the CSPA during his term of office shall be granted release time, upon request, to administer the provisions of this agreement.*
- 2) *The Administration agrees to establish on the effective date of this agreement, a time bank of paid hours of released time for the use of the Union in conduct of Union business.*
- 3) *Effective 4/1/91, on the first day of each month the Administration shall credit the Union with 104 hours of paid time to be used in the processing of grievances, meetings with the City officials on Union matters and for other activities necessary to the administration of this Agreement.*
- 4) *Released time shall be used in increments of one-half hour by members designated by the Union upon approval of the appropriate supervisor, whose approval shall not be reasonably[sic] withheld.*
- 5) *Hours not used shall be carried over from month to month during the life of this Agreement.*

6) The Administration will not pay any released time for union business beyond the provisions of this article except for meetings called by the Administration, which are not mandated, by the provisions of this Agreement.

7) All usage of union time herein provided shall be promptly reported to the Deputy Mayor for Labor Relations who shall transmit a monthly statement to the Union.

8) All other time off for Union business shall be the responsibility of the Union or an individual member.

9) This Article IX [sic] does not supersede the Executive Order of February 23, 1968, providing that the Union President's attendance at certain meetings, which shall remain in effect for C.S.P.A.

The Union has initially proposed the following change in Section 1 of Article XIII:

The President of the CSPA during his term of office shall be granted release time upon request if not already assigned as such, shall be assigned to day shift, Monday through Friday, during his tenure, and shall be released from regular duty assignment to administer the terms of the agreement. At the conclusion of his term as President, he shall return to the position and shift he was assigned at the time of election to president, unless mutually agreed otherwise.

The City has rejected that proposal. It initially desired to retain Section 1 in its present form. The essential issues involve whether the Union president should be allowed to take released time of 40 hours per week, whether, the 104 hours of available released time provided under Section 3 of Article XIII apply to the Union president, and whether the City can afford to pay for overtime replacements occasioned by the president's receiving paid released time.

To understand this conflict, it is necessary to understand Article XIII and the history of its application.

The City has had a collective bargaining agreement with the Union since at least 1977. As

late as 1991, Section 1, relating to released time for the Union president, was not in Article XIII.¹ Section 1 was added at a date that has not been specified. The other sections of the existing Article XIII were present in the 1991 agreement. Those sections (present Sections 2 through 9) have remained unchanged since 1991 except for what is obviously a typographical error in Section 9 where Article XIII is mistakenly referred to as Article IX.

In the 1980's the practice of accounting for monthly use of retired time under Section 3 of the CBA was abandoned.² Provisions for a time bank, reporting time utilization to the Vice Mayor for Labor Relations, and time accumulation in Sections 2,3,5, and 7 of the CBA were disregarded by the parties. A monthly report of time usage, as required by Section 7, has never been given to the present Deputy Mayor for Labor Relations or any other city officer. Consequently, in over 20 years, no report of time used has been given to the Union, and no calculations of time accumulation have been made.³ Nor has there been a determination of whether the allocation of 104 hours per month included released time for the Union president.

In addition to the abandonment of many provisions of Article XIII, Article XIII also contains seeming conflicts and ambiguities. Section 1 authorizes the Union president to receive released time "upon request" in order to "administer the provisions of this agreement." Section 2 purports to establish a time bank for "use of the Union in the conduct of Union business."

¹The City's witness, James Masturzo, testified that Section 1 of Article XIII was included in the original contract drafted in 1977; however, City Exhibit 4—a copy of Article XIII, Section 1 of the 1991 agreement—shows that the present Section 1 was not in the 1991 agreement.

²Testimony of prior Union president, Chuck Victor.

³A distinction here is being made between recording time taken and calculating total time. Released time has been recorded but totals have not been calculated and submitted to the Union.

[Emphasis supplied] Presumably, Union business includes more than the administration of the CBA. Yet, Section 6 provides that “The Administration will not pay any released time for union business beyond the provisions of this article . . .” and Section 8 provides “All other time off for Union business shall be the responsibility of the Union or an individual member.” It is possible that Sections 1, 2, 6 and 8 are to read to allow the president to take off whatever time he desires, that the time bank is to cover only Union business that does not involve administering the CBA, and that Sections 6 and 8 simply specify that some permitted time off will not be paid by the City. No testimony has been given on how those conflicts and ambiguities have been resolved.

Section 3 speaks of allocating 104 hours per month for “processing grievances, meetings with City officials on Union matters, and for matters necessary to the administration of this agreement.” Such allocation would seem not to include all “Union business.”

Section 4 requires “released time” to be used . . . by members designated by the Union upon approval of the appropriate supervisor, whose approval shall not[sic] be reasonably withheld.” Requiring a supervisor’s approval for released times seems different from Section 1, which requires no approval of the supervisor in order for the Union president to take released time.

Until Dan Sladek became Union president in the summer of 2011, those ambiguities did not impair the application of Article XIII. No disputes arose with respect to released time taken by the president or anyone else. Chuck Victor, the prior Union president, was an engineering draftsman in the public utility department. He held a position which permitted him to discharge many of his union responsibilities without neglecting a City need. His job also permitted him to be quickly accessed by other personnel. Unlike Mr. Sladek, who is a Safety Communications

Technician, the prior president did not have to respond to urgent calls from citizens or dispatch City personnel. Moreover the prior president's duties were such that it was often not necessary to replace him with another employee when he was performing union duties.

Under those prior circumstances, upon notification to his supervisor and with the supervisor's consent which was never denied, the union president took whatever released time he deemed necessary and used it for whatever Union responsibilities he deemed appropriate. That could include both "processing grievances, meetings with the City officials on Union matters and other activities necessary for the administration of this Agreement" as mentioned in Section 3 and other "Union business."

Such a broad use of released time, in fact, was how the current president, Mr. Sladek, interpreted his right to paid released time when he listed, in Union Exhibit 11, the duties he has as Union president and which he believes are relevant to released time. These duties include "giving leadership to the activities of the Union," representing the Union "within and outside of the City of Akron", "keep members informed," "prepare an agenda for each meeting," "speak to the News media", and "assist the City of Akron with non-partisan issues such as School Levies." In listing such responsibilities, the Union president made no distinction between matters related to administering the CBA and internal Union business.

Such an interpretation of how the Union president could use his released time posed no problems so long as Chuck Victor was Union president. However, since Mr. Sladek is employed as a Safety Communications Technician, circumstances exist which can impair prompt safety communications if Sladek takes time off for Union duties. Thus, it is sometimes necessary for the City to replace Sladek with an over-time Communications Technician when Sladek takes

released time in order to perform Union duties. If the City does not find an immediate replacement for Mr. Sladek, safety communications can be impaired.

Even after Mr. Sladek became Union president, the question of his taking released time under Article XIII, Section 1 did not become a serious issue until April 1, 2012 when his supervisor began limiting him to 10 hours of released time per week, or 40 hours per month. Prior to then, Mr. Sladek had been taking released time of between 20 and 30 hours per week. On a monthly basis, released time taken by him were:

September, 2011	90 hours
October, 2011	100 hours
November, 2011	110 hours
December, 2011	115 hours
January, 2012	130 hours
February, 2012	110 hours
March, 2012	120 hours

There is no evidence that those amounts of released time were different from what Mr. Sladek's predecessors had taken.

In April, 2012, Mr. Sladek's supervisor reduced Sladek's released time to 10 hours per week when the supervisor became aware that 775 hours of overtime was being required to cover Sladek's released time during the six months from September, 2011 through February, 2012. Projected on an annual basis, that would have been nearly 1600 hours out of total of over 16,000 overtime hours used for the Communications unit.

That conflict, therefor, became the central focus of the fact-finding hearing.

The Fact-Finding Hearing, Negotiations, and Mediation. As previously stated, at the outset of the fact-finding hearing the Union proposed the following change in Article XIII, Section 1:

The President of the CSPA during his term of office shall be granted release time upon request if not already assigned as such, shall be assigned to day shift, Monday through Friday, during his tenure, and shall be released from regular duty assignment to administer the terms of the agreement. At the conclusion of his term as President, he shall return to the position and shift he was assigned at the time of election to president, unless mutually agreed otherwise.

One reason for that proposed change was that the existing Union president worked shifts and some weekends while his predecessor worked only daytime during weekdays. Unless Mr. Sladek could be assured that he would be available to all Union members during their normal working hours he might not be able promptly to “administer the terms of the agreement” as contemplated under Article XIII, Section 1. Thus, the Union sought to have him assigned to work only days and, in fact, be relieved of all responsibilities for City work.

That proposal posed at least three problems for the City. First, Mr. Sladek was sometimes needed to work weekends because other Communications Technicians might not be available. Second, Mr. Sladek would be guaranteed 10 hours a day of released time—40 hours a week, more than 160 hours per month. That had not been a prior practice for the Union president under Section 1, Article XIII. Third, the proposed amendment would apply to any Union president, even if the president was not a communications technician who worked shifts. For such a president, the specification of work days would be unnecessary.

After most of the evidence was presented at the fact-finding hearing, the Union and City agreed to participate in a mediation process. The City proposed that Section 1 of Article XIII not be changed but that the City issue a side letter that would deal only with the problems posed by Mr. Sladek’s presidency. The Union agreed that a side letter would be appropriate for resolving

their difficulties.

The City also proposed that Mr. Sladek work only day shifts including weekends but that he be released from his work assignment only 20 hours per week –the 20 hours to be allocated to all day on Wednesday (10 hours), and from noon to the end of the day shift on the other week days that he would be assigned to work (5 hours on each of two days) “unless there is an emergency.” The Union accepted the idea of reserving three weekdays for Mr. Sladek’s responsibilities as Union president together with continued shift work. The Union proposed 30 hours per week of released time but agreed that the 30 hour guarantee could be discarded when there was an emergency requiring Mr. Sladek’s working as a communications technician.

The City rejected the proposal of 30 hours of released time per week. The parties were also unable to agree on the definition of “emergency.”

The City’s proposal would have given the Union president 80 hours per month of released time. The Union’s proposal would have resulted in at least 120 hours per month. The parties did not discuss whether or not the time would come from the 104 hours provided in Article XIII, Section 2. If the Union’s proposal were adopted, the time–of necessity–would have been in addition to the 104 hours allotted for released time per month under Section 2.

With the parties still at an impasse, the fact-finding hearing proceeded to receive further testimony. At the conclusion of the testimony, the parties made the following arguments.

Union’s Argument. The Union argued that the City of Akron has given other union presidents full time off without limiting or questioning their reasons. The issue of allowing the CSPA president released time at his request under Section 1 of Article XIII never arose until Mr. Sladek became the CSPA president and overtime became a consideration for the City.

Mr. Sladek needs to be allotted specific days to do union work because he often can not respond to union problems when he is working as a dispatcher. To do so would often jeopardize public safety.

Initially, Sladek had been allowed 30 hours off per week. No one questioned that allocation until the amount of overtime needed to replace him became apparent. Twenty hours is not sufficient time per week for Mr. Sladek to discharge his responsibilities as Union president. The fact that two other City unions have full-time presidents is proof of the need for CSPA. Mr. Sladek's position is particularly burdensome since the CSPA membership is spread throughout the city in a variety of departments. CSPA is unlike the police and fire unions in which all members have similar jobs.

If the City does not allot for Mr. Sladek sufficient time to respond to the job problems of union members during their normal working hours, the restriction will interfere with the ability of union members to freely choose their president. They may be inclined to choose a president who is not a Safety Communications Technician in order to have full access to the president's time during their own working hours.

The City uses over 16,000 hours per year of overtime to meet the needs of the Safety Communications unit. The amount of time needed to replace Mr. Sladek with an overtime worker is insignificant.

City's Argument. The City argued that the Union has ignored the statutory considerations under R.C. Section 4117.14 (G)(7)(a-f) and that the Union has the burden of proving the need to change Article XIII, Section 1 of the CBA. It argued that there was no evidence that under existing practices there were any "fires that needed to be put out" that Mr. Sladek had been unable

to handle. Even when he was allotted only 10 hours per week, he did not show inability to perform his Union functions with that time limitation.

Addressing the provisions of R.C. 4117.14(G)(7)(a-f), the City argued that the public interest required Sladek to be available when an emergency arose. Emergency situations could occur when other communications technicians failed to report for work at a time when no replacement workers were available or when an emergency occurred at a time when Sladek was at work.

The City also argued that its finances could not afford the overtime burden imposed by releasing Sladek for more than 20 hours per week and that the fact that president of two other city unions got full time off was not a parity issue cognizable for non-pay scale matters. In fact, the City argued, in other cities where the union president was a dispatcher, they did not receive a full relief of their work responsibilities.

Discussion and Recommendation. Under RC Section 4117(G)(7), the fact finder must consider the following factors:

- 1) The past collective bargaining agreement between the parties.
- 2) Comparison of the issues submitted to fact finding relative to the employees of the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved.
- 3) The interests 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) The stipulations of the parties.
- 6) Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

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May 8, 2012

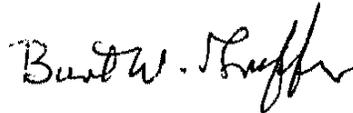
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Re: SERB Case No. 11-MED-1388
Civil Service Personnel Association and City of Akron

Dear Mr. Collins:

Enclosed is my Fact-Finder's Report and Recommendation in the above case.

Sincerely,



Burt W. Griffin

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