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IN THE MATTER OF FACT-FINDING

BETWEEN

CLEVELAND METROPARKS

AND

TEAMSTERS LOCAL 507

BEFORE: William C. Binning Ph.D.
SERB Fact-finder

SERB CASE: 11-MED-11-1682 11-MED-12-1760 (Duplicate)

PRINCIPAL ADVOCATE FOR THE EMPLOYER

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And

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INTRODUCTION

This Fact-finder was properly appointed to this case by Ohio SERB on April 25, 2012. The parties agreed to a hearing date of August 15, 2012 at the Offices of the Metroparks Zoo. A second day of hearing on this case was held on September 4, 2012.

Cleveland Metroparks is a special district in Cuyahoga County. It is governed by a three member appointed Board. It has 22,000 acres. One of its missions is conservation, and it owns and controls 16 reservations dedicated to conservation. Outdoor education is provided at seven outdoor education facilities.

In 2012, the Recreation mission of the Metroparks provided eight golf courses to the public.

The Metroparks operates the Cleveland Metroparks Zoo, a fine zoo, with over 3,300 animals within 183 acres. In 2011, the Zoo opened the African Elephant Crossing exhibit. This increased the indoor and outdoor space in an African themed habitat. This was the Zoo's largest capital budget expenditure since The RainForest opened in 1992. "African Elephant Crossing would not have been possible without the participation and support of the Cleveland Zoological Society, in which approximately half of the construction costs were raised." (Cleveland Metroparks, 2012 BUDGET p. iii)

This Fact-finding report takes up the unresolved contractual issues of the Zoo Employees only, which include approximately 103 Animal Keepers, Lead Animal Keepers, Truck Drivers, Mechanics, Horticulturalists, Leaders, Service Maintenance Workers, Service Maintenance Leaders, Watchperson, HVAC Engineer & Leader, Interactives/Electronic Technician, and Recycling & Compost Technician and Maintenance Personnel represented by Teamsters Local 507. There are other Unions that represent Cleveland Metropark employees; however those employees work throughout the Metropark system.

The Fact-finder would like to thank the Advocates, Attorneys Jon Dileno and George Faulkner, for their excellent Pre-hearing statements. I would also acknowledge their excellent presentation in educating this Fact-finder on the outstanding issues.

OUTSTANDING ISSUES

The Unresolved issues include:

1. Wage Rates
2. Health Insurance
3. Under Health Insurance: Delete F on Benefit Study Team
4. Termination (duration of contract)
5. Vacation/Longevity Bonus
6. "Me-Too Clause" or "Most Favored Nation"

Present at the Hearing:

For the Employer:

Jon M. Dileno	Attorney, Metroparks Representative
David Kuntz	Treasurer
Rosalia Fini	Law Director
Harold Harrison	H.R. Director
Steve H. Taylor	Zoo Director
Liz Gerth	Superintendent Zoo Facilities
Andi Kornak	Curator of Animals
Chris Kohar	Curator of Animals

For the Union:

George H. Faulkner	Attorney, Union Representative
Carl Pecoraro	President, Teamsters Local 507
Mary Schultz	Financial Expert
Shane Good	Zoo Animal Keeper, Union Steward
Michael Patera	General Maintenance Zoo, Union Steward
Demetrius Winters	Service Maintenance, Union Steward
Tad Schoffner	Assoc Curator of Animals
Dana Lamphier	Zoo Hort
James Casteel	Zookeeper Animal Care

CRITERIA

OHIO REVISED CODE

In Fact-finding, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered by the Fact-finder. The criteria are listed below and were given weight by this Fact-finder in his recommendations for this matter. The criteria are:

1. Past Collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer.
5. Any stipulations of the parties
6. Any other factors, not listed above, which are normally or traditionally used in disputes of this nature.

The Fact-finder met with the principals to insure that he had a list of all of the outstanding issues.

As required, this Fact-finder offered mediation prior to the opening of the hearing. The parties engaged in good faith mediation, however agreement on any of the outstanding issues was not reached and the case moved to a formal hearing.

FACT-FINDING HEARING

After approximately an hour of mediation, a formal hearing on the above matter commenced at 11 a.m. The hearing began with the Advocates for both sides offering opening statements, which was a summary of what they presented in their pre-hearing written statements on the outstanding issues.

The first interest of the parties was to establish their different views of the fiscal condition of the Metroparks and the Zoo. They both offered extensive financial data and expert testimony. They offered distinctive view of the fiscal condition of these entities. This took up almost the entire first hearing day, and which did not finish until after 5:00 p.m. This Fact-finder will attempt to summarize each of their presentations and present his view of what they offered, since that will have great bearing on the recommendations offered on the outstanding issues.

The Union presented a written report (Union, Tab 2 Sargent & Associates) and the expert testimony of Mary Schultz C.P.A. who prepared a report on the Metroparks fiscal condition and its ability to pay the requested wage increase requested by the Union.

In her report and in her testimony, Ms. Schultz presented an overview of the Park. She wrote that:

The Cleveland Metropolitan Park District (Metroparks) is financed by property taxes, as well as State Funds, and local collections from admissions, concessions, grants, fees, and services. The property tax revenues constitute 67% of total income. In November 2004, the electorate of the Metroparks service area (Cuyahoga County and Hinckley Township in Medina) supported a 10-year 1.8 mill property tax levy. The levy will expire in December 2014. The Metroparks accounting system maintains a single General Fund, (Union Tab 2)

There is no dispute over the above statement. The Schultz report goes on to review the carryover balance of the Metropark's budget in recent fiscal years. Ms. Schultz shows in her report, and she testified that the carryover balance in FY 2011 for the Metroparks was \$17,174,000, which was greater than the previous year's carryover balance. (See Union Tab 2 p 4.)

Though testimony, the Union Advocate attempted to minimize the impact on the Metroparks fiscal condition by recent State of Ohio cuts imposed on local governments and special districts. The State of Ohio budget significantly reduced the Local Government Fund and also phased out imposing taxes on tangible personal property and utilities.

Ms. Schultz testified and wrote in her conclusion:

Even with the loss of revenues from the state budget cuts, the Metroparks is spending well under budget for 2012 and remains financially stable and solvent. The 2012 wages and benefits already allow for a 2.89% increase, thus the Union's proposal for 2012 will have no financial impact on this Park this year. As shown in the Parks June 30, 2012 financial report, the General Fund carryover balance is expected to be significantly higher than anticipated, making the union proposal affordable for all three years. (Id. p.6)

The Employer Advocate, in his cross examination of Ms. Schultz, challenged the Union's interpretation of the size and the degree of discretion the Metroparks had for the use of the carryover balance. The Employer did not agree with the conclusions of Ms. Schultz as presented above.

The Employer relied on the testimony of Metroparks Treasurer, David Kuntz; to refute some of the presentations of the Union and make its case that it had serious fiscal challenges in the years ahead. The Treasurer maintains that the Metroparks cannot afford the Union's demands and also needs changes in the contract. The Employer never made a claim of "inability to pay". That term was only used by the Union.

The Employer argues that the actual carryover balance from 2011 was closer to \$8 million rather than the \$17 million the Union argued was the annual carryover balance by the Park. The Employer maintains the difference is accounted to by legally mandated restricted funds and encumbrances. The Employer maintains that because of financial pressure, it has undertaken cost cutting measures. The Park reviews every vacant position through a system known as the Position Management Program. The Metroparks has also restricted overtime use.

The Employer takes exception to the position taken by the Union that the cuts in the State Local Government Fund and recent changes in Ohio state tax law relating to Tangible Personal Property and Utilities are not "significant".

The Park also points out that the current levy's revenue is down due to delinquencies, and that this one levy, which is the major revenue source for the Metroparks will expire in 2014. That levy produces 66% of the Park's budget. They point out that the assessed real property value in Cuyahoga County is down overall in the County. That might require a millage request on the ballot that might be higher than the current levy just to break even. The requested millage amount has not yet been determined. They expect to go on the ballot in 2013 and if that fails, go back on the ballot in 2014.

There was also disagreement over how wages and benefits should be treated in the budget. In the overall budget, the Union points out personnel costs are 52% of the budget, which is quite low for political subdivisions and school districts. The Metroparks Treasurer pointed out that wages and benefits are over 70% of the operating budget of the park system.

In the Union Advocate's cross examination of the Treasurer, the Union attempted to raise some doubts about the way the Metroparks does its financial reporting. He did not say so directly, but inferred, that there was plenty of money to fund the requested raises and other costs proposed by the Union in the contract. The Union was very persistent on this search for weaknesses in the financial reports. The Metroparks was successful in rebuttal, especially by pointing out that it had received a

Distinguished Budget Presentation Award from the Government Finance Officers Association. (Cleveland Metroparks, 2012 BUDGET p. viii.)

The Union was able to get the Treasurer to agree that a 2.9% wage raise for all employees was included in the current 2012 budget. The Treasurer pointed out that management received less than a 2% raise in 2012.

The Metroparks established that despite gate and other revenues generated by the Zoo, it did not recover half of its expenses and relied on the levy to subsidize most of its operating costs.

(Note that in the 2nd hearing date, the Union brought Mary Schultz back for more testimony on the Metroparks budget document. This was not expected by the Employer, so Mr. Kuntz had to be found and brought to the hearing before Ms Schultz was allowed to testify. In the meantime, evidence on comparables was taken in. This Fact-finder told the parties he would construct this report with Ms Schultz presenting continuing testimony and put the evidence on comparables under the first issue wages)

The direction that the Union took Ms. Schultz on the second day was to create the argument that the Employer was showing only one fund while most other entities use multiple funds in presenting their financial data. Columbus and Franklin County Metropolitan Park District's and Hamilton County Park District's Statement of Net Assets (Union Exhibit 5 Day 2) were presented on the record of evidence to highlight this difference. The Union argues this approach leads to confusion on the question of restricted funds. Mary Schultz testified that the monies the Metroparks placed in restricted fund accounts is indeed discretionary. That discretionary amount according to her estimate is 18% of the levy revenue on an annual basis.

Mary Schultz went on to point out that many of the budget lines such as Utilities, Supplies, and Wages were "spiked" too high. (See Union Exhibits 4, 5, 6 offered day 2) She also pointed out that the reserve accounts for Health Insurance and Workers Comp were exceedingly high (*Cleveland Metroparks Budget 2012* p. 110). The implication of the sum total and implication of her testimony was that the Cleveland Metroparks had plenty of excess cash and could afford to meet the Union's demands for this contract under consideration.

Mr. Kuntz in his testimony cleared up a number of points. He said since the Metroparks was a "Special District", it was not required to present a budget in the form of a CAFR and uses a General Purpose Financial Statement which is acceptable to the State Auditor, who has not issued a Management letter against the Park in recent years. This financial reporting was also acceptable to the Budget Commission of Cuyahoga County. The Union also had raised the question about why there was no budget line for grants and donations, which was brought up the first day, and the answer by the Park was the same on the second day; without a letter of commitment, it would not simply use incremental budgeting for forecasting donations and grants in future years.

There was considerable discussion about the forecasted expenditures for a number of lines identified above such as Supplies and Utilities and the fund balances reserved for Health Care and

Workers Compensation. Ms. Schultz and the Union advocate suggested these were all very high and exceeded any statutory or standard practice of reserve requirements. The Treasurer defended his budgeting strategies and did not concede that he was holding back and carrying over millions of dollars that, of course, could be used for the Union's demands for this contract. He painted a challenging financial picture for the Metroparks in the next two years.

This Fact-finder is persuaded that the Cleveland Metroparks is experiencing financial pressure, and this is partly due to the loss in state aid and changes in state tax laws. More importantly to this Fact-finder, over the history of the levy, the revenue generated has been flat, for at least the last five years. This does not include any of the offered and questioned forecasted revenues and expenditures. It is based on the past reported revenue and expenditures. (*Cleveland Metroparks Exhibit Tab 3 "Financial Forecast for the Year 2012-2014"*) The levy is the major source of Zoo's operating budget. Over the same period, salaries and fringes have gone up at a significant rate. These wage and fringe cost increases have occurred in a period of general economic decline in this region of the country and in a period of relatively low inflation.

Beyond that, the Metroparks face an uncertain future with the coming of the end of the current levy, and the electoral fate of the yet undetermined amount of a future levy. It is probable that an increased levy will be placed before the voters in the next calendar year. The Park leadership will certainly want to show good stewardship with the funds the public has entrusted them with, certainly if they are asking for more.

ISSUES

WAGES:

UNION PROPOSAL

ARTICLE V-CLASSIFICATIONS AND WAGE RATES

Modify as follows:

Effective February 1, 2012 – **2.85%** General Wage Increase

Effective February 1, 2013 - 2.85% General Wage Increase

Effective February 1, 2014 - 2.85% General Wage Increase

Special Incentive Wage Increase, from current 10 cents per hour to **20 cents** per hour.

Addendum, Paragraph 20: HVAC and General Maintenance employees who possess and maintain state electrical, plumbing, HVAC< hydronics or refrigeration contractors will receive a premium of **.60** per hour as well as welders who maintain and obtain all of the following certifications: Tig Pipe; 5G & 6G A.S.M.E. Pipe; Vertical and Pipe Welding; and 3GUP. Training must be done on the employee's time and payment for training will be made upon successful attainment of the license. Once such license has been obtained, continuation classes required to renew the contractor's license may be taken on park time. (This is an increase of .10 per hour)

Night differential from current **+.55** to **+.75** per hour.

EMPLOYER PROPOSAL

WAGES –ARTICLE V

Effective October 1, 2012, all employees shall receive a wage increase of 1.5%.

Second year – no increase.

DISCUSSION

The Union, at the end of the first day, relied on internal comparables to justify its wage increase position. They argue internal pattern bargaining, which is deeply embedded in the Cleveland Metroparks contracts. The Union referred to the numerous contracts with me-too provisions and in particular the CMEA (Cleveland Metroparks Employees Association) Contract, which was for four years, with 2.85% raise each year. The Employer tried to rebut by arguing this increase was done before the State of Ohio laid out his budget plans, which adversely impacted the Cleveland Metroparks. That is partially correct, however, this generous long term contract with a non-conciliation bargaining unit was done in the midst of the most severe economic downturn since the Great Depression. The Park was exceedingly generous in very hard times, and now it is asking this Teamsters Union to absorb the price for its previous excessive generosity. Ohio's recent budget does not account for most of the Park's current and future fiscal challenges. The Park appears to recognize that it needs to reign in its future obligations or significantly raise its revenue sources, which is difficult in these challenging times.

On the second day, the Union offered much more extensive comparable data from other zoos in Ohio and around the country and even out of the country. The greatest emphasis was placed on the Columbus Zoo. They introduced evidence based on whether the particular zoos that were offered as comparisons were public, and what the budget size was compared to Cleveland Metroparks Zoo. The Employer countered by asking what the cost of living was in the locations of those various offered zoos in various large cities, like Los Angeles and San Diego. The Union did not answer that point. What was missing in the data in the comparables offered was any evidence addressing premium sharing on health care insurance at these other zoos, which is a significant issue in this Fact-finding.

The Union argued that it had made concessions in the Tentative Agreements for this next contract. The value of such concessions was not presented.

The Fact-finder was impressed by the efforts of both sides in their efforts to offer comparables supporting their particular positions. This Fact-finder has the overall impression that the Cleveland Zoo employees represented by Teamsters Local 507 are VERY well compensated, compared to Zoo employees throughout the nation. They are at or above the mean. There are slight differences in classifications, certifications and required tasks so exact comparisons are impossible, and the employer has a point that cost of living in various regions is a relevant question. The recommendation below is based primarily on two factors: first, the employer stated that this percentage wage increase was built into the current budget, over which so much attention was given the first day, and second factor was the generous wages given to the other major non-conciliation bargaining units for the two years of this next Teamsters contract. It is not recommended that the Union receive its requested **Duration** language, (see below) consequently there is no wage recommendation for a third year.

RECOMMENDATION

Effective February 1, 2012 - 2.85% General Wage Increase (retroactive to Feb 1, 2012)
Effective January 1, 2013 - 2.85% General Wage Increase
(See proposed language for **DURATION: ARTICLE XIV** below)

Special Incentive Wage Increase – same language as in 2009-2012 Agreement

Addendum, Paragraph 20: HVAC and General Maintenance employees who possess and maintain state electrical, plumbing, HVAC< hydronics or refrigeration contractors will receive a premium of **.60** per hour as well as welders who maintain and obtain all of the following certifications: Tig Pipe; 5G & 6G A.S.M.E. Pipe; Vertical and Pipe Welding; and 3GUP. Training must be done on the employee's time and payment for training will be made upon successful attainment of the license. Once such license has been obtained, continuation classes required to renew the contractor's license may be taken on park time. (This is an increase of **.10** per hour)

Night differential—same language as in 2009-2012 Agreement

HEALTH INSURANCE

There are three contract issues under Health Insurance in this contract negotiation. The first is premium share, the second is deductibles and co-pays, and the third is procedures for a union management committee on health insurance.

UNION PROPOSAL

The union proposal on premium sharing summarized below is incremental. It is based on tweaking the continuation of a long history of agreements between the parties and includes pattern bargaining and “me too” language.

ARTICLE XI –HOSPITALIZATION-(HEALTH CARE) [modified language in *italics*]

- A. No change; same language as in 2009-2012 Agreement.
- B. The Employer agrees to pay monthly premiums for group medical benefits for full-time employees and their eligible dependent to the maximum amounts and obligations set forth below:

2012- Single \$425	Family \$1,000
2013-Single \$425	Family \$1,000
2014-Single \$425	Family \$1,000

The above premiums will be paid to maintain the current medical hospitalization program (“premium plan”) **for each calendar year of this Agreement, except as otherwise provided below. In each calendar year for the duration of this Agreement.** Cleveland Metroparks will pay the entire cost of the medical hospitalization program similar to the “base plan” that is detailed in the Letter of Understanding attached to this Agreement. Employees who desire to retain coverage under the premium plan will pay the difference between the monthly premium of that plan and the caps listed above to a maximum of **6.5% of the overall cost of that plan for the duration of this Agreement.** Any modification to the premium plan **during the term of this Agreement** will be subject to approval by the Union.

Provided Kaiser is an available option, Cleveland Metroparks will pay its monthly premium during the term of this Agreement, but it will be subject to the monthly caps detailed above for the premium plan.

If the Benefit Study Team determines that it is not cost efficient or there are not enough enrollees to continue Kaiser, it may be dropped.

- C. No change; same language as in 2009-2012 Agreement
- D. No change; same language as in 2009-2012 Agreement
- E. No change; same language as in 2009-2012 Agreement
- F. No change; same language as in 2009-2012 Agreement
- G. No change; same language as in 2009-2012 Agreement
- H. No change; same language as in 2009-2012 Agreement
- I. No change; same language as in 2009-2012 Agreement

EMPLOYER PROPOSAL

INSURANCE –ARTICLE XI

Delete B and replace with the following language:

Employees shall maintain their current level of benefits and premium Contributions through December 31, 2012

Effective January 1, 2013, the Metroparks shall provide medical coverage Consistent with the plan designs of Plans A and B attached hereto. (See Attached)

Effective January 1, 2013, employees shall contribute on a monthly basis, to the cost of the Metroparks' monthly premiums for hospitalization, Prescription drug, dental and vision coverage as follows:

Plan A -15%

Plan B -12%

Plan C- 15%

Delete F (Benefit Study Team)

PREMIUM SHARE

DISCUSSION

The first issue taken up is the premium share. The Union argued basically two points. First, the Union President clearly explained the history of this complex language under existing Part B over which there has even been an Arbitration decision. Second, the Union argues it is making a concession with its language offered above as modified. The Union advocate gave great weight to pattern bargaining and the widespread impact of any changes on many of the other bargaining units in the Metroparks.

The Employer gave great attention to SERB data (SERB, 2012 20th Annual Report on the Cost of Health Insurance in Ohio's Public Sector). They point out that while the Metroparks Union member is paying a premium share of \$14 for a single and \$38 for a family member, the SERB report states "Average monthly employee contributions to bundled medical premiums, including prescription drugs coverage are \$55 for single and \$157 for family. The employer goes on to point out that this SERB data does not include vision and dental, which is included in the Metroparks premium share. (Id. p.3.)

There is no dispute the Union pays much less than what most public employees pay in Ohio, and far less than what private employees pay in premium share. There is no reason to keep the caps in the contract-- insurance premiums are not going to drop below those numbers.

RECOMMENDATION

Recommended Language: **Insurance Article XI**

Employees shall maintain their current level of benefits and premium contributions through December 31, 2012.

Effective January 1, 2013, employees shall contribute on a monthly basis, to the cost of the Metroparks' monthly premiums for hospitalization, prescription drugs, dental and vision coverage as follows;

Plan A – 15%

Plan B - 10%

Kaiser - 15%

The above recommendations are in line with the statewide averages of premium sharing statewide. (See Employer Exhibit Notebook Tab 11 on SERB, 2012 20th Annual Report on the Cost of Health Insurance in Ohio's Public Sector p.8.) The Metroparks health benefits are quite generous because they include vision and dental.

Today, the public expects that public employees will pay their fair share of health insurance premiums. Efforts to pass any renewal levy will be more difficult, if that is not the case.

It is also expected that the Employer will investigate the possibility of creating a cafeteria plan "known as premium conversion" if they have not already done so, that *might* allow the premium share payments made by employees to be made with pre-tax income. If this is possible, it will mitigate some of the burden of the recommended premium share payment language recommended above. This is beyond the span of this fact-finding and the expertise of this fact-finder to address. (See Congressional Research Service *Tax Benefits for Health Insurance and Expenses: Overview of Current Law* January 11, 2011.) This is not a requirement for the adoption of the language recommended above.

EMPLOYER HEALTH INSURANCE PLAN DESIGN

The second issue under Health Insurance is the Employers' proposal to increase the deductible and out of pocket maximum for the Health Plan as shown below:

	Plan A		Plan B	
	Network	Non-Network	Network	Non-Network
Deductable (Single)	\$200 to \$300	\$400 to \$500	\$400 to \$500	\$800 to \$1000
Deductable (Family)	\$400 to \$600	\$800 to \$1200	\$800 to \$1000	\$1000 to \$2000
 Insurance				
Out of Pocket Maximum				
Single	\$800 to \$1000	\$1,600 to \$2000	\$1,600 to \$1,800	\$3,200 to \$3,600
Family	\$2000 to \$4000	\$3,200 to \$4000	\$3,200 to \$3,600	\$3,600 to \$7,200
 Out of Pocket Maximum (Including deductible)				
Out-of-Pocket (Single)	\$1,000 to \$1,300	\$2,000 to \$2,600	\$2,000 to \$2,600	\$4,000 to \$4,600
Out-of-Pocket (Family)	\$2,600 to \$5,200	\$4,000 to \$5,200	\$4,000 to \$4,600	\$8,000 to \$9200

Source: See Cleveland Metroparks Exhibit Tab A

Recommendation on Plan Design:

No change same language as in the 2009-2012 Contract.

It is possible for the employer to create, if they have not done so, Medical Savings Accounts, which Medical Mutual can administer and might already be offered to Metroparks employees. However, the employee is expected to be able to forecast what qualified health expenditures he/she will be required to make in a calendar year and if those funds are not fully used up, they are lost. That is why this Fact-finder favors Premium sharing as recommended above and rejects the Plan design offered by the employer. The employer should pursue Medical Savings Accounts, if they are currently not available to the employees.

BENEFIT STUDY TEAM

This language under **ARTICLE XI F**

This language speaks to the tasks of the Benefit Study Team created by the language under Article XI C. The Employer wants the language under F removed from the Contract. However, the Union testified that this Benefit Study Team has successfully worked to lower some insurance costs. That was not even questioned by the Employer. Also, the language does not infringe on management rights, since the Team makes recommendations to the Executive Secretary- and the Board of Park Commissioners. Therefore:

Recommendation: No change same language as in 2009-2012 contract

VACATION/LONGEVITY BONUS ARTICLE VI

EMPLOYER PROPOSAL

The employer proposes to eliminate the vacation-longevity bonus “which provides for the elimination of a second vacation-longevity benefit which provides pay to employees based on their years of service, in the form of a lump-sum bonus ranging from \$75 to \$450 a year.” (See Employer’s Pre-Hearing Statement, p.5)

UNION PROPOSAL

The Union wishes to retain existing language.

DISCUSSION

The Union President argued past practice and pattern bargaining. He stated that the CMEA received money for “socks” in their last contract. There is little justification for these types of cash

benefits in public contracts. However, significant weight is given to existing language in Fact-finding. “Past Collective Bargaining Agreements” is something a Fact-finder is to consider under SERB rules. (See above)

RECOMMENDATION

Recommendation: No change: same language as in the 2009-2012 language.

ADDENDUM –ME-TWO

This is also called “most favored nation” in some of the Union documents. This report will use “Me-Too”.

EMPLOYER POSITION

The Employer wants the following language deleted from the ADDENDUM of the Contract.

16 If during the duration of the parties’ Collective Bargaining Agreement, the Cleveland Metro parks enters into a Collective Bargaining Agreement with other Unions that provide a total wage package (percentage wage increase and health insurance) financially more favorable than the instant Agreement, Cleveland Metroparks will, upon written request of Local 507; provide its bargaining unit with the same package.

The Employer argues that this is a “permissive subject of bargaining”, “that it is an unfair labor practice” and it is an “unlawful proposal”. If the Employer believes that, it should take those questions up with the SERB Board. However, it is in the existing contract so in this Fact-finder’s view, it is no longer a “permissive subject of bargaining”.

The Employer makes one notable point in his pre hearing statement: “Specifically, if a conciliator awards a more favorable wage package to the Metroparks rangers, the Metroparks will be compelled to extend that to the Teamsters members without the benefit of bargaining with their union. (See Employer, Pre-hearing statement p.5).

UNION POSITION

The Union opposes the Employer’s proposal to eliminate what they call the “most favored nation” provision of Paragraph 16 of the Addendum to the agreement. They cite the

long history of this language in the Agreement dating back "...in one form or another, since 1997, the past fifteen years." (See Union, Pre-Hearing Statement p. 10)

The Union successfully sought and won an arbitration arising from this language in 2008 over higher wages awarded to another unit and the increase was retroactively awarded to the Teamsters. (Id.) The Arbitration award is presented in Union *Position Statements and Exhibits Book 1* Tab 11. The Arbitration award was written by the esteemed Arbitrator Hyman Cohen. A number of the parties at this Fact-finding participated in that Arbitration hearing.

The Union also points out that "Me Too" is not only a result of Union demands. That language has also been requested by the Employer in recent contracts. They want it in or out as it suits them.

DISCUSSION

A cursory review of Metropark contracts show that "me too" exists in many of their contracts and some of them have been recently negotiated. As the Union points out this specific "Me Too" in the Teamsters contract has been there for 15 years. The Employer is frustrated because they are attempting to change the manner labor contracts are negotiated at the Metroparks and wishes to break this link between these contracts.

The only argument made by the Employer on this issue that has merit is linking this unit to bargaining units that have the opportunity to reach a final settlement through conciliation. Conciliation is a distinctively different approach for dispute resolution than the process offered to this specific bargaining unit, under ORC 4117.

RECOMMENDATION

16. If during the duration of the parties' Collective Bargaining Agreement, the Cleveland Metro-Parks enters into a future Collective Bargaining Agreement with other unions, other than those Metropark bargaining units that reached a settlement through the process known as "conciliation" under (ORC 4117), that provide a total wage package (percentage wage increase and health care insurance) financially more favorable than the instant Agreement, Cleveland Metroparks will, upon written request of Local 507, provide its bargaining unit with the same package.

Parties are to take note of the above language "future Collective Bargaining Agreement with other unions,..."

DURATION: ARTICLE XIV

EMPLOYER POSITION

The Employer is proposing reducing the term of the Contract from what has been traditionally a three year contract to a two year contract and have it coincide with the CMEA contract and FOP/OLC contract. The Employer wants language that would read "This agreement shall be and remain in full force and effect from the date of ratification through December 31, 2013..." (See METROPARKS, "FACTFINDING PROPOSAL" August 14, 2012 p.2)

The argument by the Advocate is that three of the Metroparks union contracts expire in different years. They argue this contributes to "labor instability created by contracts expiring at different times, thus causing a never-ending whip-sawing of wages." (Employer *Pre Hearing Statement* p. 6.)

The Employer also argues that the operating levy of the Park, which provides most of its revenue, expires in 2014 and will be placed on the ballot in 2013. "The financial solvency of the Metroparks rests on the levy." (Id.) If the contracts expire on December 31, 2013 the Metroparks will know the status of the levy prior to negotiations.

UNION POSITION

The Union opposes the change in language on duration. They argue past practice. The Union points out that they have had a three year contract for thirty years. They point out that the CMEA's most recent contract was for four years. (Union, *Pre Hearing Statement* p.11).

"There is no benefit to the Union and its membership at this time to agree now to a different term, given the posture of the Employer on other aspects of the Agreement." (Id.)

DISCUSSION

The Union has a very strong argument not to change the duration. For this Fact-finder, existing language carries significant weight and as indicated before the Fact-finder is obligated to look at existing contracts to guide one's recommendations.

The Fact-finder has little sympathy for the Employer's argument that they are being "whip-sawed" by having all of the contracts end in different years. The argument is appreciated, but the Employer has agreed to this scheme for decades of contract negotiations.

However, this Fact-finder is conscious of the impending impact the upcoming levy renewal will have on the Cleveland Metroparks financial solvency, and the security of the employees. The Metroparks and the bargaining units would be well advised to tread very carefully through the challenging years ahead.

RECOMMENDATION

Article XIV TERMINATION

This Agreement shall be and remain in full force and effect from February 1, 2012 through December 31, 2013, inclusive, and thereafter from year to year; provided that this Agreement will terminate at the expiration of this initial term or any renewal term if either party gives written notice to the other or its desire for termination at least sixty (60) days before such expiration date; and provided that if this Agreement is not so terminated and neither party gives written notice to the other of its desire to change or modify this Agreement at least sixty (60) days before any such expiration date, then this Agreement shall remain in full force and effect after such expiration date until a new Agreement (the terms of which shall be retroactive to such expiration date) has been negotiated and signed or until either party gives the other seven (7) days, written notice of termination.

This Fact-finder assumes that this recommendation of a shorter duration for this contract is for this contract only, and it is not his intention to initiate a new past practice or pattern.

The Fact-finder recommends all of the above and all of the Tentative Agreements reached by the parties.

This Fact-finder respectfully submits the above recommendations to the parties this 5th day of October 2012 in Mahoning County Ohio.

William C. Binning Ph.D.
SERB Fact-finder