

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

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|--|---|---------------------------|
| In the Matter of Fact Finding between: | * | Date of Report: |
| | * | October 17, 2014 |
| GENERAL TRUCK DRIVERS, | * | |
| WAREHOUSEMEN, HELPERS, SALES | * | |
| AND SERVICE, AND CASINO | * | Case No. 2013-MED-10-1268 |
| EMPLOYEES, TEAMSTERS LOCAL | * | |
| UNION NO. 957, | * | |
| | * | |
| Employee Organization, | * | |
| | * | |
| and | * | |
| | * | |
| CITY OF MIAMISBURG, OHIO, | * | |
| | * | |
| Public Employer. | * | |

**REPORT AND RECOMMENDATIONS OF FACT-FINDER
Mitchell B. Goldberg**

Appearances:

John Doll and Matt Crawford, Attorneys for the Union

Donald L. Crain and Alexander I. Ewing, Attorneys for the City

I. Introduction and Background.

SERB duly appointed the undersigned Fact Finder by letter dated May 5, 2014. The parties agreed to a Report issuance date of October 17, 2014. A hearing was held on September 5, 2014 at Miamisburg, Ohio. The parties engaged in negotiations in December 2013 and January 2014 after their collective bargaining agreement (“CBA”) expired on December 31, 2012. They attempted to mediate their disputes in March 2014. They reached an impasse on the following described issues that were submitted to Fact Finding. The parties filed timely pre-hearing statements with the Fact Finder in accordance with SERB Rules and Guidelines. They submitted documentary exhibits at the hearing and engaged in discussions across the table during the course of the hearing.

The following unresolved issues submitted for recommendations are: (1) Article 11-Wages; Article 11- Miscellaneous Wage Issues; (3) Article 14 – Health Insurance; (4) Article 8 Hours of Work and Overtime; (5) Article 14 – Vacation; (6) Article 7 – Policies and Procedures; (7) Article 25 – Duration; and Exhibits B &C.

The following recommendations adopt and incorporate all unchanged provisions of the expired CBA and all tentative agreements reached between the parties during the negotiations and during the hearing. The recommendations also consider and apply the standards set forth in Ohio Revised Code, Section 4117.14 that include (1) the parties' past collectively bargained agreements; (2) comparison of the issues submitted relative to other public employees performing comparable work; (3) the interests and welfare of the public; (4) the ability of the Employer to finance and administer the issues proposed; (6) the effect of the adjustments on the normal standard of public service; (6) the lawful authority of the Employer; and (7) other factors traditionally considered in the determination of issues submitted.

II. Unresolved Issues.

(1) Article 11 – Wages

Based upon the economic evidence presented relative to the City's financial condition and projections of its condition during this contract term, the consideration of the existing wages and benefits, internal comparisons, and external comparisons, I recommend the following:

Recommendation:

The employees in this bargaining unit shall receive an across-the-board wage increase of 2% retroactive to January 1, 2014.

For calendar years 2015 and 2016, if the employees represented by any other organized bargaining unit receive a lump sum payment or an across-the-board pay increase, the same increase shall be paid to bargaining members under this CBA. The maximum annual increase or lump sum payment that can be received under this provision due to a wage increase received by the employees in any other bargaining unit shall be 2.5% in the second year of this term (January 1, 2015-December 31, 2015), and 2.75% in the final year of this CBA term (January 1, 2016-December 31, 2016).

(2) Article 14 – Health Insurance

Recommendation:

The medical/health insurance premium percentage contribution for members of this bargaining unit shall be 10% retroactive to January 1, 2014. In the event the members of any other organized bargaining unit receive an increase in their contribution percentage above 10%, the members of this unit shall pay the same increased percentage amount in the second year of this CBA term, beginning January 1, 2015, with a maximum of 11%, and a maximum percentage amount of 12% in the third or final year of this CBA, beginning January 1, 2016.

The Union proposes to increase the life insurance benefit for those employees who have 25 or more years of service so that the accidental death and dismemberment benefit is equal to the employee's yearly wage. The City objects to the cost of this proposal and it objects because the proposal would not be paid to other employees. The police unit has this benefit, but it is warranted based upon their more dangerous work.

Recommendation: No change.

(3) Article 11 - Miscellaneous Wage Issues

The present language in Section 3 provides for seniority preference to current employees for job openings. The City wants to include internal and external bidders and select the candidates based upon overall qualifications. Seniority would apply, but would only be used as a selection factor if all other factors are equal. The Union opposes any change to its bargained for seniority rights and protections for its members. It believes there is no evidentiary basis or a compelling need to change the status quo.

Recommendation: No change, current language shall remain.

The City proposes to extend the probationary period for all new positions, including transfers into new positions to 6 months. The Union opposes any change based upon its belief that the present language was bargained for and there is no evidence of a compelling need for a change.

Recommendation: No change.

The City proposes to exempt appointment decisions from being grieved so that it may have complete discretion to appoint candidates who it believes are best suited for the jobs. The Union opposes this exemption based upon its bargained for right to contests these types of decisions if it believes the decisions are unfair to its members.

Recommendation: No change.

The City proposes to delete meal allowances in Section 5 when employees work 12 consecutive hours, or more than 4 hours during emergency call-ins. The Union opposes any change in this economic benefit that has been in past CBAs.

Recommendation: No change.

The City proposes to delete “plus rating” pay for employees in Section 6. This pay is provided for employees who work in a higher paid classification for more than 4 hours. The Union opposes any change to this longstanding economic benefit.

Recommendation: No change.

The Union proposes that the Section 5 meal allowance be increased since it has not been increased in over 10 years, notwithstanding higher food costs. The City opposes any increase based upon its proposal that the benefit be eliminated.

Recommendation: No change.

(4) Article 8 – Hours of Work and Overtime

The City proposes to eliminate payment of overtime for working in excess of 8 hours per day. The Union opposes any change to this economic benefit that was bargained for and included in past contracts.

Recommendation: No change.

The City also proposes to eliminate the inclusion of sick leave hours, vacation hours, personal leave hours, injury leave hours, holidays, and compensatory time off as hours worked for computing

overtime pay. The Union opposes these significant reductions in compensation that have been bargained for and are longstanding benefits.

Recommendation: No change.

The City proposes to modify the overtime equalization list. It proposes to offer overtime to qualified part/time/seasonal employees after exhausting the overtime list. It further wants additional language that permits it to assign weekend work to part-time or seasonal employees. It believes that these changes will save considerable costs and provide more efficiency in its operations. The Union opposes these changes, that if made would compromise the job security and earnings of its members. These protections and economic opportunities are longstanding benefits that were bargained for in past contracts.

Recommendation: No change.

The City proposed that the existing terms of “division” and “work unit” should be changed because they are obsolete terms no longer applicable to the Parks & Recreation and Public Works departments. The Union believes that there is no need for a language change because the parties have been operating within the confines of the existing language.

Recommendation: No change.

The Union proposes to increase compensatory time from 100 hours to 150 hours. It also proposes that the City must use the same overtime rules for emergencies as exists for scheduled overtime. It further proposes that a penalty would apply in situations when an employee is passed over for an overtime opportunity. Another proposal would require premium overtime compensation during a Governor-declared emergency. The City opposes these changes because it believes that they are unfair, costly and unnecessary both in terms of internal and external comparison factors.

Recommendation: No change. All proposals of the City and the Union with respect to changes in Article 8 are rejected and current language shall prevail.

(5) Article 14 – Vacations

The City proposes to change the date of vacation accumulation rate changes to the pay period of the employees' anniversary dates. The current language provides that the rate change is at the anniversary date. This would simplify the City's calculation process for vacation accrual. The Union opposes the change because it believes there would be material negative impacts on its members.

Recommendation: No change.

The Union proposes to increase paid vacation time for long-term employees. The City opposes this change because it would materially increase its expenses.

Recommendation: No change.

(6) Article 7 - Policies and Procedures

The City proposes to eliminate the requirement to test employees for drugs or alcohol after an accident or injury only when there is a “reasonable suspicion” of use or impairment. The Union believes reasonable suspicion testing is important for the protection of employee rights.

Recommendation: No change.

The Union proposes a requirement that there be Union agreement for reasonable work rules, policies and procedures. It further proposes a requirement that employees be provided with copies of all policies. The City objects to any limitation upon its management rights. Moreover, employees presently have access to all policies, procedures and work rules. There is no need to provide the same to the Union.

Recommendation: No change.

The Union further proposes to impose a deadline upon the City of 15 days to respond to employee requests to remove suspensions from personnel files. The failure to respond would require automatic removal. The City believes this requirement is unreasonable because it sometimes would take longer for it to determine whether a removal is warranted or justified.

Recommendation: No change. All proposed changes to Article 7 are rejected. Current language shall remain.

(7) Exhibits A B & C

The City imposes under Exhibit A, changes in the applicable date for a general wage increase. The Union does not object provided there is an agreement as to the calculations for the wage increases, and that the change is ultimately subject to the final agreement reached between the parties. The City proposes modifications in the listed classifications under B. The Union opposes any change that it believes “negatively effects” the bargaining unit. Finally, the parties disagree over whether an MOU referred to in C still applies.

Recommendation: No change unless they are agreed upon between the parties.

(8) Duration

Both parties indicate that they prefer a three-year CBA, as in the past.

Recommendation: The CBA term shall be from January 1, 2014 through December 31, 2016. The wages and health insurance changes made herein shall be effective and retroactive to January 1, 2014.

Date of Report: October 17, 2014

/s/ _____
Mitchell B. Goldberg, Fact-Finder

Certificate of Service

This Report was served upon the following persons by electronic mail on the __ day of October, 2014:

SERB Email: med@serb.state.oh.us
John R. Doll: jdoll@djflawfirm.com
Donald L. Crain: dcrain@fbtlaw.com

/s/ _____
Mitchell B. Goldberg