

**STATE EMPLOYMENT RELATIONS BOARD
State of Ohio**

****CORRECT CASE # 2015-MED-09-0750****

In the matter of Fact Finding between:)	Case No. 2615-MED-09-0750
)	
CITY OF TROY, OHIO,)	Hearing: April 6, 2016
Public Employer,)	
)	Date of Report:
and)	April 20, 2016
)	
AMERICAN FEDERATION OF)	FACT FINDING REPORT
COUNTY, MUNICIPAL EMPLOYEES,)	
OHIO COUNCIL 8, LOCAL 1342,)	Before Mitchell B. Goldberg,
Employee Organization.)	SERB Appointed Fact Finder

Appearances: For the Employer: Mark E. Lutz, Attorney
For the Union: P. Scott Thomasson, Staff Representative

I. Introduction and Background.

The Ohio State Employment Relations Board (“SERB”) appointed the undersigned as the Fact Finder of this public employment labor dispute on February 5, 2016. The parties agreed to an issuance date for this Report of April 20, 2016. The hearing was held on April 6, 2016 at the City's offices. The parties, in accordance with SERB Rules and Guidelines, submitted timely pre-hearing statements setting forth their respective positions on the unresolved issues for their successor collective bargaining agreement (“CBA”) that expired on December 31, 2015. They provided documentary evidence and offered oral summaries of their positions at the hearing.

The City is a municipal corporation. The bargaining unit consists of all of the employees in the following positions: Electrical Department, Refuse Collection and Disposal Department, Street Department, Water Plant, Water Distribution, Sewer Sewage Plant, Sewer Maintenance, Cemetery, and Park Department. The parties conducted bargaining sessions and were able to resolve all of the outstanding issues, except for the following four issues. Tentative agreements were entered into and the following recommendations on the unresolved issues hereby incorporate all of the TAs reached

between the parties during their negotiations. The following recommendations also are made in compliance with the statutory factors and standards set forth in the SERB Rules and Guidelines. Specifically, the recommendations take into account the wages and benefits provided to internal employees, including the bargaining units made up of the police and fire/paramedic safety forces, and those comparable wages and benefits paid to external employees who perform similar work as that performed by this unit.

II. Unresolved Issues.

(1) Article 21- Hours/Overtime Pay

The dispute concerns Section 21.8, which provides employees with higher wages when they are assigned to work in a higher paid job classification. The City proposes to eliminate this section due to the high costs that it has incurred since the employees in the Parks department were included in this bargaining unit. The City's cost for this provision was \$45,142.29 in 2014, and increased to \$63,058.66 in 2015. Examples of unreasonable pay increases caused by this section show that laborers who earn \$17.87/hour received an increase in their hourly wage when they were assigned work performed by light equipment operators of \$6.19/hour, and \$8.82/hour if they performed Electrician C work. If they perform heavy equipment operator work they receive a 44% increase in their hourly pay. These types of pay increases for performing upgraded work when done for more than 4 hours is out of line with comparable cities. For example, a laborer's upgraded pay to perform heavy equipment operator work in Piqua is only 2%. Sidney is 5% and Xenia is 6.5%.

The Union proposes to retain this economic item with the addition of a \$3.00/hour cap on upgrade pay. The language has been in the CBAs for 30+ years with minor changes. It believes that the City's cost increases could be managed more effectively by filling vacant positions and upgrading higher paid positions instead of assigning lower paid employees. Other management measures are available to minimize the cost increases, instead to totally eliminating this wage item.

The parties negotiated over this issue to the point where the City made a final offer to eliminate this item gradually over the contract term instead of all at once. It proposes a cap of the hourly upgrade payment of \$3.00 for 2016, \$2.00 for 2017 and \$1.00 for 2018 with no upgrade pay for employees hired after the effective date of the new agreement. Thereafter, the upgrade would be eliminated at the end of the contract term. The Union opposes this reduction, and insists upon retaining the upgrade pay with a \$3.00/hour cap for the above reasons.

Recommendation:

I recommend the City's position, except that there should be no stated termination of the upgrade during the life of the CBA. The parties should negotiate this section in its entirety along with the other economic issues for the next CBA. Employees who are assigned to work in higher paid job classifications for more than 4 hours a day shall be paid at the higher hourly rate up to a maximum of \$3.00/hour on the effective date of the agreement; \$2.00/hour (not cumulative) beginning January 1, 2017; and \$1.00/hour (not cumulative) beginning January 1, 2018, with no upgrade pay for employees hired after the effective date of the agreement.

(2) Article 26 – Vacation

The Union proposes changing the existing language in Section 26.5 to revert back to a prior benefit where employees forfeited their right to take or be paid for any vacation leave to their credit which was in excess of accrual for three years. The current language reduces the credit to two years for employees hired after January 1, 2013. The benefit that was put in effect for this unit was reduced in the expired CBA, but the employees in the other bargaining units (police and fire) kept the three years accrual. The Union believes that its bargaining unit should retain the same benefit so that the internal comparatives remain the same.

The City did not purposely decide to keep the police and fire CBAs at the three-year accrual rate to distinguish the benefit from that paid to the members of this unit. The three-year period was

retained by the safety units as part of an overall negotiated package where the City negotiated the retention of the three-year period in exchange for agreements reached on other issues.

I find, that for purposes of vacation accrual credits, it is more appropriate to compare external comparatives with employees performing similar work to that performed by the members of this unit. Safety force employees perform much different work that requires more training, higher education and work that is more dangerous. The safety forces have higher wages and benefits, so the City, in order to employ high quality personnel must compete with the wages and benefits paid by comparable departments. Accordingly, the vacation carryover paid by comparable cities for the same services performed by this unit show that Troy's benefit is in line with or higher than most. For example, there is no carryover paid in Piqua. Sidney pays for 2 years.

Recommendation: I recommend no change to this section.

(3) Article 24 – Sick Leave Conversion on Separation

The expired CBA in Section 24.1 provides employees with severance or separation pay equal to accrued unused sick leave up to a maximum of 1,040 hours at the current rate of pay. Section 24.2 provides for payment of \$2.75/hour for hours over 1,040 to 2,080, after which payment ceases. These sections apply only to employees hired before January 1, 2013. Employees hired after January 1, 2013 receive severance pay equal to one-quarter of the employee's accrued sick leave, up to a maximum of 240 hours at the current rate of pay.

The Union wants to return to the language that existed before the change made in the last contract that reduced the benefit. It believes that the City represented that the safety forces would receive the same reduction in their severance pay provisions. That did not happen, so it wants the original benefit restored. The City proposed the reduction in the safety forces CBAs, but chose to leave their CBAs unchanged in order to obtain what it wanted relative to other issues. I believe, as with the vacation accrual issue above, that external comparatives should be the controlling factor for this

benefit.

Other nearby cities have reduced their severance pay for workers performing this unit's work. Piqua has reduced their hours from 1440 to 1000 to 560 for employees hired after January 1, 2011. Sidney has no maximum, but pays up to 30% of accumulated sick leave hours. Miamisburg is at 500 hours maximum for employees hired after 1/1/08. Troy is now lower at 240 hours for employees hired after 1/1/13, but remains at the 1040 level for employees hired before 1/1/13.

Recommendation: No change, current language.

(4) Article 40 – Duration

The parties agree to a 3-year CBA. However, the City proposes that the wage increase for the first year at 2% should not take effect until the CBA is executed. The Union wants full retroactivity back to January 1, 2015.

Recommendation:

I recommend a 3-year CBA term beginning January 1, 2016 and expiring on December 31, 2018. All economic provisions as agreed upon or as otherwise recommended herein, including wage increases shall be retroactive to January 1, 2016, except that the changes to upgrade pay will be effective when the agreement is signed.

Date of Report: April 20, 2016

/s/ _____
Mitchell B. Goldberg, Fact Finder

CERTIFICATE OF SERVICE

This Report was served upon the following persons and agency by electronic mail this 20th day of April, 2016:

SERB Email: med@serb.oh.us

P. Scott Thomasson: daregion@afscme8.org

Mark E. Lutz: lutz@drgfirm.com

/s/ _____
Mitchell B. Goldberg