

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN: Case No. 2016-MED-10-1259

Cleveland Public Library,
Employer

Date of Hearing: November 20, 2017

And

Date of Report: December 19, 2017

SEIU District 1199, WV/KY/OH
The Health Care and Social Service Union, CTW, CLC
Employee Organization

Meeta A. Bass, Fact Finder

FACT FINDER'S REPORT AND RECOMMENDATIONS

Appearances:

For Cleveland Public Library
Ellen Toth, Chief Negotiator
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Key Tower 127 Public Square Cleveland, Ohio 44114
Ellen.toth@ogletreedeakins.com

**On Behalf Of Service Employees International Union District 1199
WV/KY/OH, The Healthcare and Social Service Union CTW/CLC**
Michael Wood, Chief Negotiator
Administrative Organizer
SEIU District 1199 WV/KY/OH
1771 E 30th
Cleveland OH 44114
mwood@seiul199.org

INTRODUCTION

Case Background:

This case is a fact-finding proceeding between the Cleveland Public Library, hereinafter referred to as CPL, and the Service Employees International Union District 1199 WV/KY/OH, The Healthcare and Social Service Union CTW/CLC, hereinafter referred to as Union. The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement, a three (3) year agreement from January 1, 2014 through December 31, 2016 between the parties, expired.

BARGAINING HISTORY

The parties met and engaged in collective bargaining on the following dates:

09/16/2016, 10/18/16, 11/09/16, 11/18/16, 12/2/16, 12/6/16 12/7/16, 01/18/17 and 1/25/17.

The parties participated in mediation on the following dates:

03/22/17, 04/26/17 (with FMCS)

08/2/17, 08/16/17, 08/23/17 and 09/21/17 (with the undersigned Fact-finder)

The following Articles have not been opened by either party and no changes were proposed by either party:

Article I: Purpose
Article II: Recognition
Article IIa: Management Rights
Article VII: Vacations
Article VIIa: Education and Advancement
Article VIIb: Evaluations
Article VIII: Job titles and Changes
Article IX: Seniority
Article XI: Layoff and Recall
Article XVa: Processing of Library Materials
Article XVII: Health & Safety
Article XVIII: Prohibition of Strikes and Lockouts
Article XIX: Authoring of Articles
Article XX: Miscellaneous
Article XXII: Negotiation Procedures
Article XXIIa: Driver's Record Check Procedures
Article XXIIb: Mobile Library Unit
Appendix F: Negotiation Team Consensus Statement
Appendix G: Memorandum of Understanding

Proposal were opened but withdrawn for the following

Article: Article III: Grievance Procedure

The parties reached Tentative Agreement on the following Articles:

Article IV. *Union and Employee Rights, Section C. Equal Rights* – Agreement October 18, 2016; signed November 18, 2016.

Article IV. *Union and Employee Rights, Section I. Union Dues and Services Fees* - Agreement signed August 16, 2017.

Article V. *Hours of Work – Section A: Work Week* – to incorporate the terms of 2016 Memorandum of Understanding to increase to 28-hour regular schedule for part time employees and grandfather clause for employees at 20-24 hours who declined option to increase to 28-hour schedule.

Article VI. *Holidays and Special Closings* - Agreement and signed August 2, 2017.

Article X. *Position Changes and Posting* – Agreement and signed August 23, 2017.

Article XII. *Leaves of Absences* – Agreement and signed August 2, 2017. Article XIII *Leaves of Absences* - Agreement and signed August 23, 2017. Article XV: *Staffing* – Agreement and signed August 2, 2017.

Article XVI: Retirement and Separation of Service - Agreement reached at hearing

Appendix C. *Position Description for Volunteers* – Agreement December 7, 2016 and signed January 25, 2017.

Appendices D & E. *Driver's Agreement and Notice Regarding Driving Record Investigations and Driving Record Investigation Authorization* – Agreement and signed August 23, 2017.

Consensus Statement #3 – Agreement August 2, 2017 and signed August 16, 2017.

The parties to this fact-finding have had an ongoing bargaining relationship. The parties have met on several occasions to negotiate a successor agreement. However, unable to reach an Agreement, the parties declared impasse and proceeded to Fact-Finding. Pursuant to Ohio Revised Code Chapter 4117, Section 4117.14

(C), and by letter issued by the State Employment Relations Board of Ohio hereinafter SERB, the undersigned was appointed by the parties through to serve as impartial neutral fact-finder to hear, consider evidence and arguments, and report findings and recommendations pursuant to Ohio law. The parties agreed to extend the time period for the issuance of the findings of fact and recommendations of this Fact-Finder pursuant to the Ohio Administrative Code Rule 4117-9-05(G). Union submitted their proposal on Friday after 5:00p.m before the Monday hearing in reliance to the Agency handbook, and CPL submitted their proposal Sunday after 5:00p.m. but before the hearing due to computer/technology issues. Position statements with supporting documentation were submitted to the opposing parties and to the Fact-Finder prior to the hearing but not in accordance with statutory and administrative regulations. Both position statements were accepted, and parties were allowed to present evidence in support of their stated positions. The fact-finding hearing was held and concluded at the Cleveland Public Library in Cleveland, Ohio 44114 on November 20, 2016. The parties agreed that four (4) Articles remain open, and proceeded to Fact-finding.

The parties agreed that the Fact-finding report would be due on December 15, 2017, and granted an extension to the Fact-finder to December 19, 2017.

OPEN ISSUES

The remaining unresolved issues, Article V- Hours Work, Article XIV- Wage and Benefits, and Article XXI- Drug Free Workplace and Article XXIV- Duration are listed herein and a brief summary of the positions of the parties is provided along with a discussion and the recommendation of the Fact Finder. In making these recommendations, consideration was given to the factors set forth in Ohio Revised Code Section 4117.14 (G) (7) (a) to (f):

- Past collectively bargained agreements between the parties;
- Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and the classification involved;
- Interests and welfare of the public, the ability of the public to finance and administer the issues proposed, and the effect on the normal standards of public service;

- Lawful authority of the public employer;
- Stipulations of the parties; and
- Such other factors, not limited to those above, which are normally or traditionally taken into consideration.

Description of Employer

The appointing authority is the Cleveland Public Library. The CPL service area includes the cities of Cleveland, Bratenahl, Linndale, Newburgh Heights, and a portion of Garland Heights. It had a 2010 population of 400,787 persons, 98,424 (24.6%) of whom are children under 18 years old and 70,115 (17.5%) are of school age (5 to 17). With 164,299 occupied housing units the average household size was 2.37. The majority (54.6%) of these household were renters (compared to 31.7 percent in the suburbs). The average 2010 population size among 29 services areas was 13,741.00. There is much diversity in the demographic and socioeconomic characteristics of its neighborhoods and branch service areas.

Based on data from the 2005-2009 American Community Survey (ACS), median household income in the CPL service area was \$28,064, which is lower than \$53,362 median among suburban households. Among persons age 25 and older in the services area an estimated 75.6 percent have a high school diploma (or GED) or more education. Approximately 13.8 percent have a bachelor's degree or higher education. Suburban residents have more education with more than 90 percent with a high school diploma and 34.1 percent with a bachelor's degree or more.

Description of the Bargaining Unit

A. Recognition Defined. The Board of Trustees hereby recognizes the Union as the sole and exclusive bargaining representative for the members of the bargaining unit defined below. This recognition shall be for the purpose of bargaining about wages, fringe benefits, hours and terms and conditions of employment.

B. The bargaining unit shall consist of all employees of the Cleveland Public Library employed on a full-time or part-time regular basis, excluding supervisory, managerial, confidential, seasonal, casual

employees and pages as defined and described by the State Employment- Relations Board in case number 86-REP-4-0146, as modified by the State Employment Relations Board in case number 01-REP-07-0168 on December 6, 2001, upon the merger of Service Employees International Union District 925 (Ohio) with Services Employees International Union District 1199. The classifications included in the bargaining unit are listed in Article XI, Section D.5.

C. There are approximately 400 individuals in the bargaining unit inclusive of librarians, assistant librarians, clerks, IT-clerks, and others.

FIRST ISSUE
Article V: Hours of Work

Because of changes in today's society, CPL had to rethink and reassess the nature of its operations and organizational structure in an attempt to provide greater effectiveness and efficiency in providing services to the residents of its community. CPL initiated community discussion regarding the ways to improve the library operations and make the library more attractive as a resource for all ages. The community responded with a willingness to pay additional money to modernize buildings and provide for additional capacity, and in fact recently passed a levy with a projected revenue of eight (8) million dollars. Under its BOLD Plan, the CPL's first initiative seeks to renovate buildings to make them more attractive for its patrons. CPL's second initiative seeks to reorganize its operation in its branch to provide for additional resources and hours for its patrons. CPL's third initiative seeks to promote literacy for childhood development, adult literacy financial health and so forth. The last initiative seeks to develop and explore additional programs for funding its operation.

In 2014, CPL's Board of Trustees created an *ad hoc* committee it named "CPL 150." The Director and Board gave Public Services leadership a directive to organize CPL by district, based on the Cleveland Police Department (CPD) structure and patron usage. CPL 150 worked with Kent State University's Cleveland Urban Design Collaborative (CUDC), which was conducting studies regarding different neighborhoods. To that end, CPL and Union have submitted proposals for modification of Article V, Hours of Work.

Position of CPL

CPL contends that the Library is facing difficult challenges in maintaining effective neighborhood access to its resources. CPL asserts the importance of providing efficient and effective library services in today's evolving society. The study indicates that service areas overlap to some extent, especially among closely located libraries, and there is cross-usage at CPL's branches for various reasons, and the CPL is committed to making the studies recommendation a reality where applicable in the various branches. CPL asserts its priority in upholding the trust placed by the citizens in recognition of its objective under its BOLD Plan with the passage of the levy.

Position of Union

Union contends that other Bargaining Units at Cleveland Public Library and other public City of Cleveland employees have overtime computed by counting holidays and vacations days, as well other public employees in the City Of Cleveland also have these hours counted, and seeks parity with other CPL employees. Union asserts that employees who are required to work or accept extra hours are providing extra service to the Library and should not suffer the loss of overtime pay simply because a holiday occurs during the week of this extra work or when using prearranged vacation days. Union further asserts that issue of Saturday staffing at branches has been an ongoing concern which it has attempted to address in past collective bargaining sessions. Union asserts it is disingenuous for CPL to claim their proposals should be adopted when they have failed in the past to perform the studies they agreed, in writing, to perform. Raising this issue now places an unfair and completely unacceptable burden solely on members of the Union to solve it. Union has offered solutions to in the past to no avail. Further, the CPL's proposal does not take into consideration the hardship it places on numerous members who rely on public transportation system to travel to and from work. Union asserts that effective training of managers would eliminate these issues.

Discussion:

The current contract language in the CBA, Article 5, Section E.1 states that:

If the branch service model changes in any way including, but not limited to, reducing the number of branches and/or moving to a regional service model, the Library shall provide

the Union with a minimum of sixty (60) calendar days' notice. The Library and the SEIU District 1199 Executive Board Member(s) shall meet to discuss implementation and bargain over changes.

CPL has provided notice, and made the changes in Article E subject of bargaining. Both the CPL and Union have presented their respective proposals on Article 5. At the fact finding hearing the Union expressed its concerns that the studies as agreed to by the CPL had not been done. Union also expressed concern over the effect that the ability of CPL to reassign bargaining unit members, due to operational needs, the day of the occurrence. Finally, Union asserts that in the past the issues related to operational need in staffing arose from the failure of CPL staff to properly schedule. Union's proposal seeks to limit the CPL's ability to cause branch moves within the work day the day of an occurrence, and to allow CPL to continue to use substitute or employee volunteers. The CPL seeks to reduce the use of substitutes and minimize cost, and utilize its own workers when operational needs dictate. In its proposal CPL pays an additional \$1.25 per hour when a member is pulled from their respective home branch, travel time is on the clock plus the cost of transportation. Union asserts that members are familiar with their patrons, and patrons are accustomed to services provided by people they know, the "neighborhood librarian." Change is difficult for patrons, but the objectives of the BOLD Plan are also critical to modernize the library's appeal and service to its patrons.

Recommendation:

The CPL's proposal is recommended with the following exception:

Article V, Paragraph D of the Union's proposal is adopted.

SECOND ISSUE
ARTICLE XIV Wages and Benefits

POSITION OF CPL.

CPL contends that it did not budget for salary increases for 2017 or 2018 due to budget concerns. Notwithstanding CPL provided retroactive increases of two (2%) percent to members of Laborers Local 860 upon ratification of a new contract, as well as to all non-bargaining unit members. Each will also receive two (2%) percent increases beginning in January 2018 and January 2019. CPL contends that comparable libraries have received similar increases to that proposed by CPL. CPL submitted the *CBA Between Cuyahoga County Public Library and SEIU District 1199, a three (3) year contract: 1-1/2%/ 2% & tied to PLF/ 2% & tied to PLF*, the *CBA Between The Public Library of Youngtown and Mahoning County and Public Librarians Association of Youngtown, SEIU District 1199, a four (4)year contract*, allowing a two (2%) percent wage increase each year, and Medina Public Library, a three (3) year contact providing a two(2%) percent wage increase each year. CPL contends that the wages for its employees remain among the highest among similarly-situated library systems, and the proposed wage increase is comparable to similarly situated library-systems.

POSITION OF UNION

Union contends that its members have made concessions in wages and benefits over the last two (2) contracts, and Union seeks a wage increase across the board 5% for 2017, 4.5% for 2018, 4% for 2019, and 4% for 2020 and a ratification bonus of \$1,000.00 for full time employees and \$750.00 for part-time employees. Union argues that the Library has paid raises of nearly 25% to some administrative staff salaries. Union also requests a restoration of the frozen steps. Union contends that CPL has expanded its administrative staff and outsourced work with Care Works while decreasing the number of both Union personnel and overall staffing. Union's opines that its proposal will ensure qualified

staff is prepared to act as Lead Workers, and current practices have led to inadequate training for those needed to act in a Lead capacity. Union asserts that it is fair to include Union members in formulation of requirements and training of lead workers. Lastly these workers should also not be limited to branches as there is a need for this at the Main Library as well. Union contends that the Library has shown no compelling argument to change the formulation of the premium payments between the Union and Library. Current premium payments for part time employees effectively make the cost of obtaining insurance prohibitive for part time employees. Small adjustments in this will represent a small increase in the Library's overall costs but will make this insurance more affordable for part-timers.

DISCUSSION

CPL presented evidence to support its position regarding the general fund budget. In 2014, total operating revenue for CPL was \$54,721,547, and total operating expenditures were \$52,841,431 revenue/expenditures total \$1,880,116. In 2015, total operating revenue was \$53,332,782 and total operating expenditures \$53,617,393 resulting in revenue/expenditures total (\$284,611). In 2016, total operating revenue was \$52,070,001 and total operating expenditures \$53,918,430 mil resulting in revenue/expenditures total (\$1,848,429). In 2017, total operating revenue was \$52,504,032 and total operating expenditures \$55,304,803 resulting in revenue/expenditures total (\$2,800,770). In 2018, total operating revenue was \$51,802,670 and total operating expenditures \$56,365,109 resulting in revenue/expenditures total (\$4,562,439). If Return of Advances Out and Transfers or Advances Out are added, then net revenue/expenditures across the board are at a deficit. CBL agrees that it presently has a healthy General Fund unencumbered balance, but CPL continues to appropriate over certified revenues. The unencumbered balance in 2014, was 22.9 mil, 2015 was 24.4 mil, in 2016 was 21.3 mil, in 2017 a projected balance of 17.1mil, in 2018, a projected deficit of (\$12.6) mil.

The general rule is that certified revenue should equal Total Revenues to maintain a balanced budget. CPL submits in the past few years, appropriations have exceeded revenue. 2016 Public Library Statistics indicate that the average percentages of operating expenditures to operating revenues for Ohio Public libraries during 2016 was fifty-seven (57%) percent was allocated to salaries/benefits, twelve

(12%) percent to library materials, and twenty-two (22%) percent to other. The averages for CPL was higher than the state average with 68% allocated to salaries/benefits, fourteen (14%) percent allocated to library Materials and twenty two (22%) percent allocated to other, i.e., purchased contract services, supplies, capital outlay and miscellaneous. These averages were also higher than Columbus and Cuyahoga County Libraries. In 2017, the certified revenue equaled \$52.50 million. Operating appropriations are exceeding the certified revenue by 2.8 million, and the excess will be taken from the encumbered balance. It is projected that CPL is heading into 2018 with a \$4.6 million gap in net revenue/expenditures with the assumption of a 2% annual salary increase; current wellness point structure; 0% increase in medical premiums with current enrollment; 0% increase in dental, vision, life. 2018 projected Revenue is \$51.8 million with 65% or \$33.67 allocated to salary/benefits, 22% or \$6.73 mil allocated to Library material, and thirteen (13%) percent allocated to other.

A Salary Comparison Chart for the Cleveland Public Library, Akron-Summit County Public Library, Public Library of Cleveland and Hamilton County, Columbus Metropolitan Library, Cuyahoga County Public Library, Dayton Library, Toledo-Lucas County Public Library, and the Public Library of Youngstown and Mahoning County indicates that overall Cleveland Public Library is the highest paid in the State. A review of the hourly rates reveals that: The position of Librarian MLS Non-supervisor is paid between \$27.34 and \$40.17 per hour only Columbus Metropolitan equivalent positions pay a higher wage of \$44.22 per hour. The position of CPL Library Assistant is paid between \$ 22.42 and \$33.16 per hour whereas Columbus Metropolitan of \$54.38 per hour, Cuyahoga County pays \$39.97 per hour, Toledo Lucas County Public Library pays \$37.66 per hour and the Public Library of Cincinnati and Hamilton County pays \$36.95 per hour. The position of CPL Clerk is paid between \$15.58 and \$31.20 per hour. Cuyahoga County Public Library equivalent position pays \$15.67 per hour on the low end. The position of CPL IT Technician is paid between \$22.64 and \$41.98 per hour, no equivalent pays higher. Another

CPL position pays between \$16.58 and \$31.58 per hour. Cuyahoga County equivalent positions pays \$21.78 per hour on the low end.

The Union points out that all of these libraries are not unionized, and suggested Avon Lake, Lorraine County, and Portage County. Union contends that other library systems in the area have negotiated contracts with SEIU 1199 WV/KY/OH that include increases much greater than what CPL has offered in their proposal. Portage County District Library and SEIU District 1199 negotiated an agreement calling for increases of 9% over 3 years, including 4% in 2016. The Lorain Public Library System agreed to restoring step increases for employees not at the top of their pay scale for the first two years of an Agreement ratified in April of 2017 in addition to increasing the pay scale overall. The Avon Lake Public Library agreed in June of 2017 to increases totaling 8.5% over the coming three years. Cuyahoga County and SEIU 2017-2020 negotiated a 2-2-2-2 across the board increase.

The Union membership has its own economic concerns. From the salary comparison introduced by CPL, these bargaining members are deemed middle class. Members introduced and openly talked about their net incomes and keeping up with the cost of living. Pursuant to the Fact-finder Report regarding Case Number 2013 MED 10 1479, as certified to SERB on September 29, 2014, all members of the bargaining unit received a wage increase of 1.5% for each year of the CBA. Both parties agreed that the Fact-finder's recommendation was tied to the bargaining members' retention of the premium health insurance plan that terminated shortly after the report was issued as noted by the Fact-finder. Union asserts that it did not have the benefit of the premium plan throughout the term of the contract. CPL's other bargaining unit members through negotiation and non-bargaining employees were paid 2-2-2. Members were negatively impacted not just for the duration of the plan but the term of the CBA when they were also placed in the standard plan. While other employees were still enjoying the benefit of the increased wage during the second half of the contract, these employees received a reduced wage and were placed in the standard plan. The loss of real wages is further compounded because pension benefits are tied into wages. The Director stated that Union rejected an offer to increase the percentage after the fact-finding report was issued. The Union contends that the offer came prior to the fact-finding hearing, and the Union elected to proceed to fact-finding. Otherwise they would have accepted the same.

After reviewing all of the contentions, arguments and positions of the parties regarding wage and benefits, and after consideration of the statutory and administrative requirements, the Fact-finder is persuaded that a nominal adjustment in the CPL's proposal is sustainable in its budget.

RECOMMENDATION

After reviewing, the Fact-Finder has reviewed the parties proposals related to Article XIV: Wages and Benefits, and adopts CPL's 8/16/2017 Response to Union Proposal #1 on Article XIV: Wages and Benefits (07/28/17) proposal of the CPL with the following exceptions:

2. There will be a salary increase as follows:

- a. For 2017, retroactive to December 29, 2016 of two percent (2.0%),
- b. For 2018, effective the pay period that includes January 1, 2018, two and one-half percent (2.5%),
- c. For 2019, effective the pay period that includes January 1, 2019, two and one-half percent (2.5%) percent.

Upon ratification all members of the Bargaining Unit employed full time by the Library will receive a Ratification Bonus in the amount of \$500.00, and all part-time members of the bargaining unit will receive a ratification bonus in the amount of \$250.00. Payment of this ratification bonus will occur during the first full pay period following ratification.

3. Union's language is adopted, and the only deletion to the current CBA language is the phrase "Effective 30 days after ratification, branch."

THIRD ISSUE

Article XXI: Drug –Free Workplace

CPL requests a modification to current drug-free workplace policy to cover all bargaining unit employees. The current contract provides for testing of only CDL drivers.

Position of CPL

CPL contends that the current contract language does not allow CPL to conduct post accident testing of employees who are involved in accidents involving CPL vehicles, equipment, etc. other than CDL drivers. To that end, the CPL maintains that the proposed Post-Accident Testing Policy which replaces Paragraph E is designed to allow CPL to conduct post-accident testing if CPL can meet the criteria for “reasonable suspicion” and the injury or accident resulted in medical treatment beyond “first aid” or property damage greater than \$500.00. The Post-Accident Testing Policy will thus provide for the safety of CPL employees, patrons and the community.

CPL further contends that property damage claims totaled \$74,647.44 in the last five (5) years; however, there was no post-accident testing policy to allow CPL to conduct testing in those cases. Additionally, CPL further contends this policy has been included in the collective bargaining agreement ratified by Laborers Local 860 in June 2017 and has also been implemented with regard to all non-bargaining unit employees. CPL asserts that since the implementation of the policy, CPL has not

conducted any post-accident drug tests. CPL requests the adoption of its policy in order to ensure that all CPL employees are treated the same and subject to the same conditions of employment.

Position of Union

Union contends CPL has made a proposal that is entirely without justification and there is no need to change or add to the long-standing language currently contained in Article XXI. The contentions of the CPL do not demonstrate a compelling need to subject employees to drug testing beyond the language of the current collective bargaining agreement or what the law otherwise allows. The CPL has provided no evidence of employees using illicit drugs or consuming alcohol on work time, and no evidence that there are sufficient workplace issues – either relating to performance or on the job accidents – that require the adoption of *any* additional drug testing policies. Union asserts that the Library has offered no reasonable justification Union further contends the CPL’s proposal was presented to the Union with only the rationale that it would be a means of saving money on the State of Ohio’s Worker Compensation Insurance. The Library stated a premium savings between \$4,000 and \$7,000, a statistically insignificant amount based on the CPL’s overall budget. Moreover, this savings would actually be offset the costs associated with the administration of drug tests, i.e. the cost of actual test, the amount of time an individual spends in conjunction with providing samples, the cost of possible administrative leave awaiting results, the cost of requiring

Human Resources personnel to be away from other aspects of their jobs and a host of other, yet to be known, factors, one of which would likely be additional costs for arbitrations due to the demonstrated inability of the Library to administer discipline in an appropriate fashion.

Additionally, Union contends the CPL's proposal is contradictory in some places, vague in others, and places a low threshold for the triggering of the test, and may result in the unjust application of the policy and potential abuse. Union asserts its concern that administrative personnel will not be able to fairly or accurately ascertain dollar amounts for damages of CPL's and appropriate trained to determine of an individual is impaired by drugs or alcohol.

Union requests the Fact Finder reject the Library's proposal and find that current language and practice are sufficient. In the event the Fact Finder is in agreement that there is reasonable cause to institute some additional language regarding post accident drug testing the Union humbly requests that the Fact Finder adopt the Union's proposal.

DISCUSSION

The proposal of the CPL uses the terminology of "reasonable degree of possibility" that drug and/or alcohol use may have been a contributing factor to the reported injury or accident, and the Union uses the terminology "reasonable degree of suspicion." The term of "reasonable degree of possibility" and "reasonable suspicion" are not synonymous. The former phrase providing for a degree of possibility is overly

broad, and provides no guidelines in its application by CPL or to the employee, and may lead to abuse. Whereas phrase the reasonable suspicion, does have a long history of relevant discussion regarding its meaning and significance which will provide an understanding to both CPL and employee of its application.

The proposal of the Union requires that such reasonable suspicion must be documented in writing and supported by two witnesses, including the person having such suspicion. The proposed language requiring two witnesses is too restrictive in the workplace, and injury to person or property may occur with no witnesses but only the employee. To the extent that the proposal requires the Employer to obtain a second witness, likely to result in work stoppage, is unwarranted. The underlying concern of abuse by the Union is belayed by the other prong of the test requiring injury or damage. The Union proposal also has a tier level to make a decision to test. There was insufficient evidence as to the operations of the CPL regarding who would be making these decisions. The undersigned will defer to the CPL to establish this process, and as any abuse is subject to the grievance policy.

CPL introduced evidenced of damage claims totaling \$74,647.44 in support of its proposal. A motor vehicle incident involving property damage and bodily injury occurred on May 7, 2012; the loss totaled \$15,153.63. A motor vehicle incident involving property damage and bodily injury occurred on March 19, 2013; the loss totaled \$35,568.12. A motor vehicle incident involving property damage occurred on

November 12, 2013; the loss totaled \$4,640.92. A motor vehicle incident involving property damage occurred on August 11, 2015; the loss totaled \$927.72. A motor vehicle incident involving property damage occurred on April 23, 2016; the loss totaled \$23.95. A motor vehicle incident involving property damage occurred on December 25, 2016 and the loss totaled \$17,131.52; another vehicle struck the CPL vehicle in this incident. A motor vehicle incident involving property damage occurred on December 30, 2016; the loss totaled \$1,201.58. There was no evidence that any of these accidents involved drug and/or alcohol use. CPL has suspicion that the loss on March 19, 2013 involved drug and/or alcohol use; the same CPL employee was involved in three (3) accidents on the same day.

Based upon the evidence presented for damages, the \$500.00 threshold appears to be unreasonably low, and the \$5,000.00 threshold proposed by Union is too high. CPL's Summary of Property Damage submitted by CPL indicates that on December 30, 2016, a CPL vehicle backed into another vehicle, and damages totaled \$1,201.58, and another fender bender occurred on April 23, 2016 and the loss totaled \$23.95. On August 11, 2015 the CPL backed into another vehicle and damage totaled \$927.72. Based upon testimony at the hearing, the amount of damages appears to be unique to each incident, and that the proposed property damage and injury thresholds for testing should be changed. The average of these occurrence is \$717.75, which rounds up to \$750.00.

It is notable that the Union Submission of the Agreement between Lorain Public Library and SEIU, District 1199, effective April 1, 2017 through March 31, 2020 contains a Drug and Alcohol Abuse Policy, which will be given to all employees; the specifics of the policy were not incorporated into the Agreement for my review.

Other than a savings on their workers compensation insurance, the CPL offered no other evidence related to a need for testing of non-safety sensitive positions. The CPL asserts that since the policy has taken effective for the other bargaining unit and non-bargaining employees, there has been no incident of drug testing. It is inappropriate to draw an inference that this policy is now a deterrent when there was no evidence that there was a problem beforehand.

CPL bears the burden of proof to show that there is an existing problem within the bargaining group that must be remedied or the potential for a problem that could be averted. In this instance despite the fact that the CPL already has a policy that applies to CDL drivers, that burden was not met in respect to these bargaining members comprised of librarian, clerks, IT technicians and others. However, there are positions at the CPL that require workers to drive CPL vehicles or their private vehicles and/or operate other CPL machinery that may be hazardous to themselves or others during the scope of their employment. For those positions, such a policy is warranted.

In this Fact-finder's view, there must be a reasonable basis for investigating whether alcohol and/or drug use may have caused or contributed to an injury or

property damage. Employers are required to take precautions to make certain that their workplaces are safe. Alcohol and/or drug testing are important aspects of those precautions. The Fact-finder recognizes that to institute a blanket policy which automatically mandates such testing after every single accident might be considered an invasion of privacy. Employers are better served by using reasonable, nondiscriminatory, discretion in these instances, and employees should not be deterred from properly reporting injuries.

After reviewing all the contentions, arguments and positions of the parties regarding the drug and alcohol policy, and after consideration of the statutory and administrative requirements, the Fact-finder is persuaded that the drug and alcohol policy should be expanded to be applied to motor vehicle accidents and accidents related to the use of machinery with the potential to be hazardous to the operator or others.

Recommendation

The Fact-finder hereby adopts the CPL proposal with the following exception: G.1 should read, (and adoption of the Union's proposed definition of reasonable suspicion in part) as follows:

G. Post-Accident Testing

1. Employees may be drug/alcohol tested if the following conditions occur

(where permitted by applicable federal, state and local law):

- a. CPL has a reasonable suspicion for believing that drug and/or alcohol use by the employee to be tested was a contributing cause of a reported injury or

accident, *and*

b. the injury or accident resulted in disabling personal injury requiring immediate hospitalization of any person or property damage more than \$750.00, and

c. Reasonable Suspicion: Employees covered by this Agreement may be required to submit a urine specimen for testing for the presence of drugs or a breath sample for the testing of the presence of alcohol where there is reasonable suspicion to believe that the employee was impaired by the use of drugs and/or alcohol and that such impairment was the primary cause of a reported injury or accident which resulted in disabling personal injury requiring immediate hospitalization of any person or property damage in excess of \$750.00. Such reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe that an employee is under the influence of, or is using or abusing, alcohol or drugs. Examples of reasonable suspicion shall include, but are not limited to, slurred speech, disorientation, abnormal conduct or behavior not reasonably attributable to other potential causes, Observed use, possession, or sale of illegal drugs. Apparent physical state of impairment of motor functions, marked changes in personal behavior not attributable to other facts, either over a period of time or on an occasion; and violations of criminal law statutes or ordinances involving the use of illegal drugs,

alcohol, or prescription drugs and/or violations of drug or alcohol statutes.

FOURTH ISSUE
ARTICLE XXIV: DURATION

The current contract language provides for a three-year duration from January 1, 2014 through December 31, 2016. Union seeks a modification upon ratification.

Position of Union

Union contends that three (3) year contracts are the longest allowed under current State of Ohio Collective Bargaining rules. Union opines the delay in negotiating a successor Agreement to the Agreement that expired on December 31, 2016 is good cause to ensure the next Agreement is in effect for a full three years. Union proposes that the parties' successor Agreement take effect upon its ratification by the parties of the Tentative Agreement and the Fact Finder's ruling for the duration equal to three years.

Position of CPL

CPL presented no formal proposal with regard to Article XXIV. During the hearing, CPL argued that current contract language for a three-year contract duration should continue. The current CBA corresponds with the calendar year and the financial outlook of the CPL.

DISCUSSION

Under OAC 4117-9-05 (F), the Fact-finder is prohibited from taking evidence in support of any proposals that were not presented the business day before the

hearing. As previously indicated the prehearing statements of both parties were accepted by the Fact-finder. However, the prehearing statement for the CPL does not include a proposal reflecting their position of status quo. Therefore, pursuant to rule, the arguments and direct testimony by CPL is given no weight.

Now turning to the Union proposal, Union is requesting that the parties' successor agreement take effect upon its ratification by the parties of the Tentative Agreement and the Fact -Finder's ruling for the duration of three (3) years. The rationale in support of the proposal is that the delay in negotiating a successor agreement to the CBA that expired on December 31, 2016 is good cause to modify the language. The pre-negotiation statements or ground rules were not submitted. The prehearing statement indicate that the parties engaged in collective bargaining for nine (9) sessions; one (1) in September, 2016, one in October, 2016, two in November of 2016, two in December, and two in January of 2017. The parties participated in two mediation sessions with in March and April of 2017, and continued with six (6) mediation sessions. There was no evidence that any ground rules and/or renegotiations agreement were violated. There was no evidence of bad faith in negotiations. Both parties are sophisticated bargainers, and could have reached impasse if they thought negotiations were futile. They did not. There was no evidence that the delay caused any harm. For the Fact-finder to modify the CBA now would be contrary to the statutory factors.

RECOMMENDATION

The Fact-finder recommends the following language:

This Agreement shall become effective from January 1, 2017 to midnight, December 31, 2019 and thereafter from year to year unless at least (600 days but not more than one hundred twenty (120) days prior to said expiration date, or any anniversary thereof, either party gives written notice to the other of an intent to negotiate on any or all of its provisions.

Nothing in this Article shall be deemed to prevent an agreement between the Library and the Union to extend the termination date.

CONCLUSION

In this report, I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties may adopt alternative language by mutual agreement.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in Ohio Revised Code Section 4117.14, the Fact finder recommends the provisions herein.

In addition, all tentative agreements reached by the parties are hereby incorporated by reference into this Fact-Finding Report, and they should be included in the resulting Collective Bargaining Agreement.

December 19, 2017

[/s/ Meeta A. Bass](#)

Meeta A. Bass
Fact- Finder
Dublin, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Fact Finder Report was sent by e-mail on December 19, 2017.

State Employment Relations
Mary.laurant@serb.state.oh.us
Board Mary E. Laurant 65 E. State
Street Columbus, Ohio 43215

Ellen Toth, Esq.
Ogletree, Deakins, Nash, Smoak &
Stewart, P.C. Key Tower 127 Public
Square
Cleveland, Ohio 44114
Ellen.toth@ogletreedeaikins.com

Michael Wood
Administrative Organizer
SEIU District 1199
WV/KY/OH 1771 E 30th
Cleveland OH 44114
mwood@seiu1199.org