

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

STATE EMPLOYMENT
RELATIONS BOARD

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**REPORT & RECOMMENDATIONS
OF THE FACT FINDER**

IN THE MATTER OF:

City of East Cleveland

(Employer)

-and-

District 925

Service Employees International Union

(Union)

Case No. **96-MED-06-0584**

HEARING:

As the result of a mediation session held on November 25, 1996, and
an evidentiary hearing held on January 17, 1997
at the Employer's facility in the City of East Cleveland, Ohio.

APPEARANCES:

On Behalf of the Union:

Gregory J. Lavelle	Counsel
Carol Sims	District 925
Carmella R. Verna	Steward
Amber M Hughly	Steward
Jannetta Rolland	Steward

On Behalf of the Employer:

James H. Hewitt, III	Director of Law
Marc J. Bloch	Special Counsel
Gayle Goodwin Smith	Director of Finance

Gregory James Van Pelt

Fact Finder

2203 Murray Hill Road
Cleveland, Ohio 44106-2640

SUBMISSION

In accordance with the provisions of Section 4117.14(C)(3) of the Ohio Revised Code, the undersigned was appointed Factfinder in the present matter, effective August 9, 1996.

An attempt was made to mediate issues at impasse between the Parties on November 25, 1992. An evidentiary hearing was held on January 17, 1997, at which the Parties were afforded an opportunity to present witnesses and evidence in support of their respective positions. Statements of the Parties positions were submitted to the Factfinder prior to the hearing.

ISSUES AT IMPASSE

The Parties initially identified four primary issues at impasse:

- I. Article II - Recognition
- II. Article XVII - Health and Welfare
- III. Article XXV - Wages
- IV. Article XXIX - Duration

Of these, Article II - Recognition was resolved prior to hearing of the matter.

BACKGROUND

East Cleveland is a City in financial post-arrest. In 1988, substantial deficits in a number of funds and millions in outstanding, unencumbered accounts payable led the State Auditor to declare the City to be in a state of "fiscal emergency" under ORC Chapter 118. Accordingly, the East Cleveland Financial Planning and Supervision Commission was appointed to direct the City's finances, and the firms of Coopers & Lybrand and Dingus & Daga were engaged to supervise.

In the fall of 1991, a Financial Plan was developed by the City and approved by the Commission. Under this plan, the City is attempting to pay off past liabilities and fund deficits; balance the annual budget; implement budgetary controls and a

financial management system; increase the effectiveness and efficiency of City operations; rebuild the City's credit rating; and, restore East Cleveland's ability to borrow on the public credit market. The Financial Plan assumes budget increases in most areas, including wages, of 2.5% per annum for the years covered by the present negotiations. No expenditures can be made on behalf of the City which are not in compliance with the financial plan.

The measures necessary to stabilize the City's condition were, by necessity, Draconian. Spending was restricted and hours in certain City Departments were reduced. With the present Administration came increased efforts to reduce spending; and, when City revenues continued to decline further, Employees from every Department except Fire were laid off.

Although stabilized, the prognosis for East Cleveland is far from assuring. Crime, violence and decaying infrastructure increase, while the City's tax base continues to decline. The poverty rate remains around 40%. The struggling remnants of the major industries that boomed half a century ago close or reduce operations. Few significant new taxable enterprises are contemplated.

A number of the measures necessary to stabilize the City's finances were borne by City employees, including the present bargaining unit. With layoffs, workers who remained were asked to assume additional duties, and, in some Departments, essential new operations were instituted. With the exception of the safety forces, East Cleveland Employees earn significantly less than their counterparts in surrounding communities; and members of District 925 are among the lowest paid Employees of the City.

The issues at impasse between these Parties must therefore be resolved in a manner consistent with the City's financial limitations. At the same time, bargaining unit members must be compensated at a rate sufficiently comparable to their colleagues in nearby communities if East Cleveland is to continue to attract and retain qualified, competent employees.

ISSUES AND RECOMMENDATIONS

Article XVII - Health and Welfare

Union Position

While the Union accepts the necessity of a small co-payment of premiums for hospitalization, it is concerned that contract language specifically include by reference the continuation of current health care benefits. District 925 contends that proposed co-payments for family coverage would equal six percent of members take-home pay. Accordingly, it says, agreement must be tied to the full requested wage increase.

City Position

The City maintains that some co-payment of health care premiums is necessary, given East Cleveland's financial situation. The City asserts it has expanded health care options and facilities available to Employees at no cost to them, and argues the necessity of maintaining uniform health care provisions among City Employees.

Findings and Recommendation

The control of health care costs, a concern in many communities, is particularly critical in East Cleveland, whose financial crisis leaves little margin for contingencies. However, the City's fiscal position also leaves Employees among the lowest paid in the area, and assurance that health benefits provided for themselves and their families will continue at existing levels without increased expense is therefore a legitimate concern.

Consequently, the following contract language is recommended:

Section 17.1 The Employer agrees to maintain the current hospitalization and dental plans for all employees covered by this Agreement as set forth in Appendix A. The Employer will continue to pay the full cost for single and/or family coverage until ratification of this Agreement by all Parties. Upon ratification, Employees will pay ten dollars (\$10.00) per month for single hospitalization coverage and twenty dollars (\$20.00) per month for family hospitalization coverage. Upon ratification

by all Parties, Employees will pay fifteen dollars (\$15.00) per month for single dental coverage and forty-two (\$42.00) per month for family dental coverage.

Section 17.2 The Employer shall continue to provide the Employee Assistance Plan at the expense of the Employer and shall make the Plan available to all members of the bargaining unit.

Article XXV - Wages

Union Position

The Union maintains that members of this bargaining unit receive less than 80% of the wages paid colleagues in comparable surrounding communities and within the City of East Cleveland. It therefore propose increases of 2.5%-4%-4%, over three years, with increases of 5% in each of two extended years. The "pattern" of 0% - 3% - 3% asserted by the City to have been accepted by all non-safety Employees of East Cleveland does not reveal additional compensation provided by non-wage items, says the Union. It also expresses concern that non-bargaining unit personnel performing the same or similar duties not be hired at differing rates, and seeks contract language assuring parity for Union members. District 925 seeks to have longevity pay provided for in Article XXV paid in two semi-annual installments, as opposed to the bi-weekly payments proposed by the City.

During the last contract period, bargaining unit members employed by the Water and Tax Departments were required to assume extensive additional duties. Moreover, other bargaining unit members in custodial positions were underpaid compared to non-Union City Employees doing similar work. Accordingly, the Union proposes hourly wage increases for these Employees.

City Position

All other non-safety bargaining units, as well as City Employees not represented by Unions have accepted wage increases of 0% - 3% - 3% for the contract period covered by this Agreement, says the City. In its present financial situation, the City contends it lacks the ability to pay any amount in excess of the pattern it has

negotiated with other Employees. Accordingly, it urges the Factfinder to recommend this wage increase.

The City also contends that annual or semi-annual payment of longevity allowances for bargaining unit members poses a difficulty in the Fourth Quarter, when other year-end contractual entitlements are also due. Consequently, the City seeks change in the present lump-sum longevity remuneration to allow for bi-weekly payment.

Likewise, while it acknowledges the added duties assumed by Employees in the Water and Tax Departments, the increased responsibilities, says the City, were transitional in nature, and duties have now stabilized. Accordingly, the City proposes lump-sum compensation, rather than additional hourly increases for these Employees.

Findings and Recommendation

Despite Union observations that the financial situation of East Cleveland has improved since the crisis of 1988, it is clear that the City's fiscal circumstances remain tenuous. The austerity measures undertaken by the Administration, and admittedly borne greatly by City Employees, have stabilized, not cured, the ailing community.

The marginality of East Cleveland's financial position has, for the most part, been recognized by the other bargaining units with whom the City relates; the pattern of acceptance of the City's wage proposal by both represented and non-represented Employees, including a SERB Conciliator, bespeaks broad understanding that East Cleveland cannot afford to pay its workers rates comparable to more comfortable surrounding communities at the present time. At the same time, with expectations of removal from its fiscal trusteeship sometime this year, the City must be prepared to reassess its ability to fairly compensate its Employees, and to appreciate their present sacrifices, in negotiations for a successor agreement to take effect in 1998.

While its financial condition requires bargaining unit members to forebear wage increases beyond the re-evaluated CPI indicators, there is little to support the City's assertions that payment of longevity benefits in one, or two, lump-sums is unmanageable. In asking its workers to sacrifice for the benefit of the community East Cleveland assumes an equal responsibility to manage some inconvenience for the sake of its Employees. To Employees asked to work for less than colleagues in surrounding communities, the addition of a few dollars to their bi-weekly paychecks means far less than the prospect of an assured vacation or holiday fund. Moreover, it is a benefit currently enjoyed under the present contract. The City benefits from the financial counsel of esteemed Commissioners, the supervision of two well-regarded accounting firms and the administration of an experienced and professional Director of Finance. It is difficult to believe that continuation of the practice of lump-sum longevity payments, or their division into semi-annual installments is beyond the City's capability.

Evidence indicates the additional duties undertaken by Employees of the Water and Tax Departments were largely limited to a transitional period, in which new or revised functions in those areas were instituted. Accordingly, it seems appropriate that compensation acceded to by the City be made as a single payment, rather than an increase in salary. While the Factfinder is reluctant to tarnish contract language with provisions for specific individual Employees, no agreement as to the salaries of the two custodians could be made, and their salary increases must accordingly be included herein.

Therefore, the following contract language is recommended:

Section 25.1 The City agrees to pay One Hundred Percent (100%) of the Employee's contribution to the PERS pension plan throughout the contract and effective January 1, 1995.

Section 25.2 Each full-time Employee will receive a zero (0%) increase in his annual base wage in 1995. Each Employee shall receive a three percent (3%) increase in his annual base rate effective January 1, 1996. Each Employee shall receive a three percent (3%) increase in his annual base rate effective January 1, 1997.

Each Employee shall receive an adjustment of forty cents (\$.40) per hour effective January 1, 1997, prior to the percentage adjustment as set forth above. Employees in the Water Department and Tax Department will receive a one-time performance bonus of \$1,000, payable prior to expiration of this Agreement. Nellie Carter will receive an adjustment of ninety cents (\$.90) per hour, effective June 1, 1995, in addition to all other increases. The rate of L.C. Whitmore shall be increased by fifty-three cents (\$.53) per hour, effective June 1, 1995, in addition to all other increases. The rates hereunder shall be as set forth in Appendix B hereto.

The minimum rates for classifications shall likewise be increased by the above percentage amounts applicable to the 1997 wage increases. Any premium paid to a person hired after November 20, 1996 above the minimum rate, plus annual adjustments, shall also be paid to all existing Employees in the Department in which said Employee works.

If a new classification becomes covered by the terms of this Agreement, or if the Union contends that there has been a change in the workload, duties or responsibilities of an existing classification or position such that the wage rate for said position or classification should be increased, the Parties shall negotiate with respect to the wage rate applicable to said classification or position. Any dispute with respect thereto shall be subject to arbitration in accordance with this Agreement, any increase in the wage rate being made retroactive to the date of the creation of the job title and/or the change in workload, duties or responsibilities.

Section 25.3 Employees with the required years of service shall receive longevity bonuses in recognition of their continuous service to the City of East Cleveland. This annual longevity bonus shall be paid by the City in two (2) payments to be made on the first pay period ending after June 1st and the first pay period ending after December 1st of each year, based on the years of service as of said dates. The Employee must be in service as of the above dates to be eligible to receive payment. No pro-rata payment of longevity will be permitted if the Employee leaves employment prior to said dates.

The amount of the longevity bonus shall be as follows:

*One year through five years of service -----\$0
Six years through ten years of service -----\$500.
Eleven years through fourteen years of service ----\$750.
Fifteen years through twenty years of service----\$900.
Twenty-one years or more -----\$1100.*

Under no circumstances shall previously accumulated longevity time of an Employee who resigned or is terminated from his employment with the City and not reinstated be placed to his or her credit upon his re-employment.

Article XXIX - Duration

Union Position

The Union points out that negotiations regarding the present Agreement will not conclude until the final year of the contract term. Under these circumstances, says the Union, it is extremely wasteful of limited time and resources to negotiate a contract effective for only nine months. Accordingly, it proposes the Agreement become effective on ratification, with retroactivity from January 1, 1995, and that it obtain through December 31, 1999.

City Position

The Employer argues that ORC 4417.09(E) bars agreements containing expiration dates later than three years from the date of execution. Accordingly, it rejects the Union proposal, and asks the Factfinder to do likewise.

Findings and Recommendation

The Union's argument regarding the improvidence of negotiations aimed at concluding an agreement that obtains for less than a year has some merit. However, there is less clear evidence that such an extension would be in the best long-term interest of either Party. New negotiations, based on the financial position of the City following its expected release from emergency status this year would seem advisable. Moreover, the authority of the Factfinder to impose such an extension on the Parties is questionable under the Revised Code.

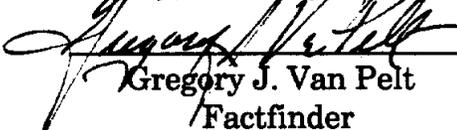
Therefore, the following contract language is recommended:

Section 29.1 This Agreement represents a complete and final understanding on all negotiable issues between the City and the Union. The Parties recognize that this Agreement totally supersedes and integrates all wages, hours, benefits and terms and conditions of employment existing between the Parties. Furthermore, the Parties acknowledge that each had ample opportunity to submit proposals and bargain over all negotiable matters and that this Agreement shall be the sole source of any and all rights and/or claims regarding wages, hours, benefits or other terms and conditions of employment. Where this Agreement is silent on a wage, hour, benefit and term or condition of employment, the City may act with discretion consistent

with applicable law. Where no applicable law exists, the City reserves the right to act at its discretion. This Agreement shall be effective from the date of ratification of this Agreement until 12:01 am on January 1, 1998, and thereafter from year to year unless at least ninety (90) days prior to said expiration date; or any anniversary thereof, either Party gives timely written notice of an intent to negotiate on any or all of its provisions. Upon timely written notice of an intention to reopen negotiations, an initial conference will be arranged no later than forty-five (45) days prior to the termination date of the Agreement. Nothing in this Section shall be deemed to prevent an Agreement between the City and the Union to extend the termination date.

Respectfully submitted

Monday, February 10, 1997


Gregory J. Van Pelt
Factfinder