

**STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING REPORT**

STATE EMPLOYMENT
RELATIONS BOARD

FEB 20 11 00 AM '97

FEBRUARY 19, 1997

IN THE MATTER OF:

AFSCME, OHIO COUNCIL 8, LOCAL 74

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CASE NO. 96-MED-09-0841

AND

CITY OF WARREN, OHIO

APPEARANCES:

FOR THE UNION:

Mark T. Carlson, Staff Representative
Delbert McElrath, Treasurer, Local 74
Richard DiVincenzo, Executive Board, Local 74
Lee E. DeJacimo, Vice President
Al Devenzencie, President
Pat Calvey, Water Distribution Tech

FOR THE EMPLOYER:

Gary C. Cicero, Director of Human Resources
Brian M. Massurci, Personnel Supervisor

FACT-FINDER:

JOSEPH W. GARDNER, #0033400
Attorney at Law
4280 Boardman-Canfield Rd.
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INTRODUCTION

The parties met on the 5th day of February, 1997 and mediated their differences. Through mediation, several issues were disposed of. After the mediation was finished, the fact-finding conference was opened and both parties proceeded to introduce evidence and arguments on all of the issues.

The city has stipulated that it is not claiming "inability to pay" against any of the demands of the union.

Litigation is currently pending between the union workers and the city. There has been a decision in the Court of Common Pleas, Trumbull County, Ohio, however, that case is currently being litigated in the Eleventh District Court of Appeals of Ohio. The litigation appears to involve the union, city council, the administration and the treasurer.

Although the undersigned is sensitive to this current litigation and although much of the evidence and many arguments overlap, the fact-finding process is limited to making recommendations to the parties after hearing all of the evidence and after reviewing all of the statutory and regulatory guidelines as set forth in Ohio Revised Code and the Ohio Administrative Code, respectively.

ISSUE NO. 1, ARTICLE 15 POSTING OF JOB OPENINGS

DISCUSSION

The union is seeking a change in the agreement. Currently all job openings that are promotional in nature are posted whereas entry level jobs are not posted. Union argues that this contract creates problems with changing careers paths. If an employee is in one department and does not like it there or is dissatisfied with that department, that employee may not, as a contractual right, bid into another department at the entry level. The union further states that of all of the area unions, this is the only contract where an employee does not have the contractual right to bid into an entry level job. The union further states that under the current welfare reform system, without the right to bid into these entry level jobs, these jobs will be taken by those who are "forced" to work because of welfare reform. This current practice strictly confines and limits the job and career opportunities of the employees.

The employer counters stating that there has never been a problem with any employee requesting a transfer. However, the employer does wish to have the discretion to refuse a transfer. The employer states that someone may desire an entry level job who is not qualified and the employer wants the discretion to exclude those persons who are not qualified.

The employer also states that since some department heads are elected officials, those department heads want to have a voice in who is hired in their department. Allowing each department head a say in who is getting hired would promote a good working relationship and would also serve a political need with patronage of jobs. The undersigned understands and agrees that both of those reasons are good reasons to keep the contract as is.

However, this restriction in employee movement is archaic. All other area unions have this provision and it is truly a good benefit for employees who desire to change career paths.

RECOMMENDATION

The language in Subsection 8 to Section 15.01 shall be changed as follows:

“The city shall post any vacant positions which are in the Bargaining Unit...”

Further, Subsection B of Section 15.01 shall read as follows:

“Whenever there is a job opening in the exclusive Bargaining Unit covered by this contract...”

Section 15.03 of the current agreement should be deleted.

ISSUE NO. 2, ARTICLE 19 OVERTIME

DISCUSSION

There have been many abuses with compensatory time. Compensatory time was originally agreed upon between employers and employees in those situations where the employer did not have the funds to pay overtime. Since that time, there have been many abuses. In this situation, however, it was clear that these hours cannot be “banked” or “cashed out”. In other words, there is no cash liability to the employer or to the taxpayer.

It appears that the intent of the both the employer and the union, when this benefit was first negotiated, was to grant to the employees a contractual right to a benefit which would enable the employees to take time off in lieu of working overtime. Subsequent arbitration interpretations have limited and restricted this right to this benefit.

If the right to this benefit is based upon an agreement between a department head and the employee, there is no right unless there is an agreement. Therefore, as it currently exists, the employer controls the benefit. If the employer controls the benefit, it is not a contractual right. Therefore, the undersigned finds in favor of the union on this issue.

RECOMMENDATION

Section 19.01(G) should read as follows:

“Any and all overtime provided by this article shall be calculated and paid as part of the pay period worked, except that members may be allowed to accumulate a maximum of 180 hours of compensatory time (120 hours actually worked) in lieu of paid overtime.

ISSUE NO. 3, SECTION 19.02 SPECIAL STATUS EMPLOYEES

DISCUSSION

The current contract language mandates that before overtime may be paid, the employee must work forty (40) hours in a work week. The proposal of the union is that overtime should be paid for each hour worked in excess of forty (40) hours worked in a work week. In other words, if other time is used in calculating the forty hour work week, even though hours are not worked, the employee would be entitled to overtime. The undersigned finds that the language proposed by the union will give incentives to the employees to use other time than time worked in an attempt to obtain overtime. The purpose of overtime is to reward individuals for working over and above the number of hours that they are required to “work”.

RECOMMENDATION

It is the recommendation that the language set forth in Section 19.02 remain the same.

ISSUE NO. 4, ARTICLE 25 LONGEVITY

DISCUSSION

The parties have fully discussed this and have reached a proposed agreement. This proposed agreement has been explained to the undersigned and the undersigned recommends that this agreement be made part of the contract.

RECOMMENDATION

It is recommended that the following wording be placed into Article 25 of the contract:

After five (5) full years each employee shall receive \$4.50 per month for each year of service with the city. Longevity payments shall be calculated in the following manner:

$4.50 \times 12 \times (y)/2080$ where “y” represents the employee’s years of service. The resultant amount shall be added to the employee’s base rate of compensation and shall be paid as an hourly

rate for each hour in pay status. Longevity payments shall be in regular pay periods and each longevity payment shall be made in each regular pay period commencing January 1, 1997.

EXAMPLE:

An employee is credited with ten (10) years of service, the longevity is calculated as follows: $(4.50 * 12 * 10) / 2080 = \0.26 per hr. paid on all hours in pay status, not subject to overtime premium.

**ISSUE NO. 5, ARTICLE 29, SECTION 29:03
SICK LEAVE AND BEREAVEMENT LEAVE**

DISCUSSION

The union seeks to separate bereavement leave and employee sick leave. Currently, there is no separate provision for bereavement leave. In reviewing the contract, bereavement leave is addressed by using accumulated sick leave. The undersigned finds that an employee should be entitled to bereavement leave separate and apart from sick leave for a certain period of time. However, if further bereavement leave is needed, accumulated sick leave may be used if both the employer and the employee agree.

RECOMMENDATION

It is recommended that Section 29.03A-4 read as follows:

For Bereavement Leave: In the event of a death in the employee's immediate family, (spouse, parent, step-parent, child, step-child, brother, sister, grandparent, grandchild, mother-in-law, father-in-law), the employee shall be granted no less than three (3) and up to five (5) days of bereavement leave. Such leave shall be paid, but not deducted from the employee's accumulated sick leave. Additional time may be approved by the Director of Public Service and Safety or his designee for special circumstances and emergencies. Any additional time shall, with the agreement of the employer and the employee, be charged to the employee's accumulated sick leave or vacation leave.

**ISSUE NO. 6, ARTICLE 34
HEALTH CARE BENEFITS**

DISCUSSION

While most employers and unions are facing a rise in health care costs and while both employers and unions are searching for funds to pay these rising costs, this is not the case within this Bargaining Unit and with this employer. It appears that both the employer and the union have taken care to keep down the costs of health care benefits and at the same time created a surplus fund for health care benefits. In such a situation, the employees covered under this health care plan should be rewarded in better benefits for this type of restraint and this type of management. Therefore, the position of the union should be granted.

RECOMMENDATION

It is the recommendation that Article 34, paragraph # 5 under health care benefits should read as follows:

Paragraph # 5: Effective March 1, 1997, the city will contribute \$7.25 per month for each Bargaining Unit employee to the AFSCME, Ohio Care Plan for benefits under the plan as determined by the union.

**ISSUE NO. 7, ARTICLE 35
PERS AGREEMENT**

DISCUSSION

The undersigned finds that the language proposed by the union more accurately portrays the intent of the parties and should be accepted.

RECOMMENDATION

Section 35.01 of Article 35 should read as follows:

Section 35.01.PERS PICKUP: For the duration of this agreement the employer shall continue to pay, on behalf of each employee, the employee's share of the PERS pension contribution to the State of Ohio in accordance with rules of the Public Employees Retirement System. This amount shall be equal to eight and one half per cent (8 ½ %) of each employee's gross wage.

**ISSUE NO. 8, ARTICLE 21
PAY RATES AND VARIATION REGARDING
CALL OUT TIME, MEAL ALLOWANCE,
CONSTRUCTION/OUTSIDE CONTRACTORS AND STANDBY PAY**

DISCUSSION

The undersigned has reviewed the arguments set forth under Section 21.01, Call Out Time, Section 21.08, Meal Allowance, Section 21.05 Construction Projects and Section 21.13, Standby Pay. It appears that the compensation received by the employees and the structure of payments are fair. There seems to be no need for any type of change in the contract language.

RECOMMENDATION

It is the recommendation that the language in the following articles and sections remain the same:

- Article 21, Section 21.01, Callout Time
- Article 21, Section 21.08, Meal Allowance
- Article 21, Section 21.05, Construction Projects/Outside Contractors
- Article 21, Section 21.13, Standby Pay

**ISSUE NO. 9, ARTICLE 20
PAY RATES**

DISCUSSION

The union makes a compelling argument that there should be equal pay for the same or similar work between departments. Therefore, the pay rates for 1996 from which any increase must take place should be increased to equalize pay between workers in different departments whose work is the same or similar. Therefore, we will adjust the 1996 pay rates so that persons who are doing the same and similar jobs in different departments will have a higher base rate of pay before considering any increases.

The union desires an adjustment for competent persons. Furthermore, it is found that the parking monitor is the lower paid in the city and her base rate should be brought to \$10.48. The union requests adjustments in base rate for hazardous pay and competent person pay. It is the finding of the undersigned that when those employees engage in employment activities which expose them to hazardous situations or if new and greater responsibilities are placed upon a person, then there should be an increase in pay. However, the undersigned finds that this increase should not be in the base rate. The proper procedure is to negotiate and if negotiation does not produce a result, arbitration should determine when an employee is exposed to hazardous duty and when an employee should be compensated for being a competent person. Those changes may be addressed under Article 17 of the contract.

As to the rate of increase, a three (3) percent increase would barely, if at all, keep the employees up with the rate of inflation. It appears that the employees and management have been doing a good job managing city funds and it appears that the productivity of the workers has been excellent. In light of those considerations and considering all of the other evidence, the undersigned will recommend a twelve (12) per cent increase over the term of this contract.

It is recommended that there shall be a four (4) per cent increase in the first year, a four (4) per cent increase in the second year and four (4) per cent increase in the last year.

RECOMMENDATION

The undersigned has found that the prevailing wage rate for 12/31/96 should be adjusted and is adjusted for reasons of equal pay for the same or similar jobs. Furthermore, the undersigned has found that an increase of 4% per year is the amount of increase recommended for the term of the contract. The undersigned has done an example for the first position but expects the employer and the employee to do the actual calculations of the four (4) percent increase per year. It is the recommendation of the undersigned that the following positions receive the following rates of pay:

POSITION	PREV. ADJ RATE/HR 12/31/96	PREVAILING RATE/HR 01/01/97 Increase by 4% of rate of 12/31/96	PREVAILING RATE/HR 01/01/98 Increase by 4% of rate of 1/1/97	PREVAILING RATE/HR 01/01/99 Increase by 4% of rate of 1/1/98
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BOARD OF HEALTH

Sanitarian Supervisor	15.86	16.49	17.15	18.82
Sanitarian III	15.40			
Sanitarian II	14.10			
Sanitarian I	13.04			
Public Health Nurse	13.04			
Environ. Health Clerical Coordin.	11.55			
Vital Statistics Clerk	11.01			

OPERATIONS

Foreman	14.29			
Engineering Aide III	14.29			
Master Skilled Maint. Man	13.49			
Heavy Equipment Mechanic	13.49			
Equipment Operator IV	12.98			

POSITION	PREV. ADJ RATE/HR 12/31/96	PREVAILING RATE/HR 01/01/97	PREVAILING RATE/HR 01/01/98	PREVAILING RATE/HR 01/01/99
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OPERATIONS CONT'

Cement Finisher	12.72			
Bricklayer	12.72			
Automotive Mechanic	12.72			
Skilled Maintenance Man	12.72			
Section Leader	13.49			
Crew Leader	12.20			
Equipment Operator II	12.20			
Sign Painter	12.72			
Carpenter	12.72			
Painter	12.72			
Office Administrator	12.20			
Equipment Operator I	11.62			
Assistant Auto Mechanic	11.62			
Lineman (Paint Crew/Seasonal)	11.62			
Secretary	12.20			
Data Entry Operator	10.75			
Custodian Worker	10.67			
Clerk Typist	10.48			
Laborer II	11.09			
Laborer I	10.48			
Welder/Metal Fabricator	12.72			
Executive Secretary	12.38			

POSITION	PREV. ADJ RATE/HR 12/31/96	PREVAILING RATE/HR 01/01/97	PREVAILING RATE/HR 01/01/98	PREVAILING RATE/HR 01/01/99
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ENGINEERING, PLNG. & BLDG.

Building Inspector	14.90			
Electrical Inspector	14.90			
Plumbing & Mech. Inspector	14.90			
Engineering Aide IV	15.86			
Engineering Aide III	14.29			
Engineering Aide II	13.50			
Zoning and Planning Technician	13.70			
Executive Secretary I	12.20			
City Services Compliance Coordin.	12.65			
Engineering Aide I	11.91			
Secretary	12.20			

INCOME TAX

Chief Investigator/Auditor	14.90			
Investigator/Auditor	13.66			
Senior Cashier/Auditor	13.66			
Cashier/Auditor	12.66			
Data Systems Specialist	12.20			
Clerk Typist	10.48			

PACKARD MUSIC HALL

Auditorium Maint. Man	12.20			
Assistant Auditorium Maint. Man	11.42			

POSITION	PREV. ADJ RATE/HR 12/31/96	PREVAILING RATE/HR 01/01/97	PREVAILING RATE/HR 01/01/98	PREVAILING RATE/HR 01/01/99
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SANITATION

Foreman	14.29			
Crew Leader (Special Status Emp.)	493.60			
Refuse Collector (Spec. Stat. Emp.)	472.00			
Heavy Equip. Mechanic	13.49			
Office Supervisor	12.45			
Pickup Truck Driver	12.34			
Laborer I	10.48			

WATER POLLUTION CONTROL

Electronic Systems Specialists	15.11			
Chief Plant Maintenance Mechanic	14.92			
Plant Maintenance Mechanic III	13.60			
Plant Shift Leader	14.29			
Foreman	14.29			
Assistant Chemist	14.29			
Plant Maintenance Mechanic II	12.81			
Heavy Equip. Mechanic	13.49			
Plant Operator II	12.63			
Section Leader	13.49			
Crew Leader	12.20			
Equipment Operator II	12.20			
Executive Secretary I	12.20			
Plant Operator I	11.91			
Plant Maintenance Mechanic I	11.89			

POSITION	PREV. ADJ RATE/HR 12/31/96	PREVAILING RATE/HR 01/01/97	PREVAILING RATE/HR 01/01/98	PREVAILING RATE/HR 01/01/99
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WATER POLLUTION (Continued)

Equipment Operator I	11.62			
Laborer II	11.09			
Laborer I	10.48			
Clerk Typist	10.48			

WATER

Cross Connection Technician	14.54			
Foreman	14.29			
Plant Shift Leader	14.29			
Water Distribution Technician	14.29			
Assistant Chemist	14.29			
Pumping Station Mechanic	14.29			
Maintenance Electrician	14.29			
Plant Maintenance Mechanic III	13.60			
Heavy Equipment Mechanic	13.49			
Customer Service Representative	12.72			
Water Serviceman	13.13			
Plant Maintenance Mechanic II	12.81			
Plant Operator II	12.65			
Water Line Repairman	13.49			
Section Leader	13.49			
Equipment Operator II	12.98			
Tapper-Meter Repairman	12.84			
Executive Secretary I	12.20			

POSITION	PREV. ADJ RATE/HR 12/31/96	PREVAILING RATE/HR 01/01/97	PREVAILING RATE/HR 01/01/98	PREVAILING RATE/HR 01/01/99
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WATER (Continued)

Plant Operator I	11.91			
Engineering Aide I	11.91			
Meter Reader	11.91			
Plant Maintenance Mechanic I	11.84			
Data Entry Leader	11.70			
Cashier	11.64			
Equipment Operator I	11.62			
Data Entry Operator	10.75			
General Clerk	10.48			
Laborer II	11.09			
Laborer I	10.48			

FIRE DEPARTMENT OFFICE

Heavy Equip. Mechanic/Welder	13.49			
Executive Secretary I	12.20			

POLICE DEPARTMENT OFFICE

Executive Secretary I	12.20			
Animal Warden	11.62			
Janitor/Cook	10.51			
Clerk Typist	10.48			
Parking Monitor	10.48			

POSITION	PREV. ADJ RATE/HR 12/31/96	PREVAILING RATE/HR 01/01/97	PREVAILING RATE/HR 01/01/98	PREVAILING RATE/HR 01/01/99
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COMMUNITY DEV. DEPARTMENT

C.D. Accountant	14.08			
Program Coordinator	13.92			
Program Specialist	13.92			
Executive Secretary I	12.20			
Secretary	11.12			

**ISSUE NO. 10, ARTICLE 37 (NEW ARTICLE)
DRUG AND ALCOHOL TESTING**

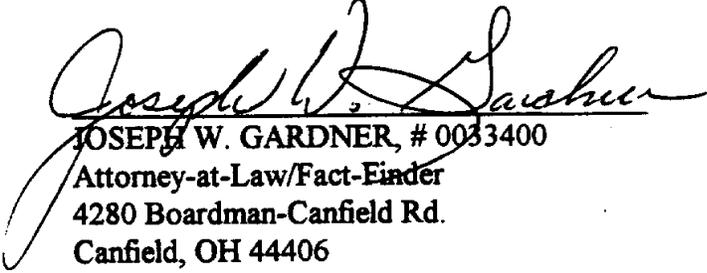
DISCUSSION

The undersigned has reviewed the evidence requesting drug and alcohol testing by the employer. Clearly, random drug and alcohol testing is a search without "probable cause". The "reasonable suspicion" standard is less stringent than the "probable cause" requirement of the Fourth Amendment of the United States Constitution and the corresponding provision of the Ohio Constitution.

A work requirement that individuals submit to searches, unless it is willingly and voluntarily given, is coercion. Furthermore, there has been no evidence presented at the hearing where the use of drugs or alcohol is a problem with the Bargaining Unit. To impose this working condition when there is no compelling reason to do so is not warranted.

RECOMMENDATION

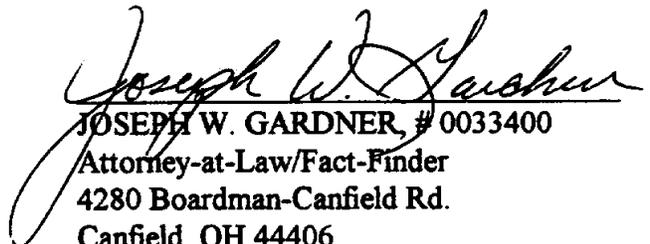
It is recommended that Article 37 not be included in the contract.


JOSEPH W. GARDNER, # 0033400
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CERTIFICATION

A copy of the foregoing Fact-Finding Report was forwarded to Mr. Mark T. Carlson, AFSCME, Ohio Council 8, 150 South Four Mile Run Road, Youngstown, OH 44515 and Mr. Gary Cicero, Director of Human Resources, City of Warren, 391 Mahoning Ave, NW, Warren, OH 44483 via Overnight Mail on the 19th day of February, 1997.

A copy of the foregoing Fact-Finding report was also forwarded to Mr. G. Thomas Worley, State Employment Relations Board, 65 East State Street, Columbus, OH 43215-4213 via regular U.S. Mail on the 19th day of February, 1997.


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