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STATE EMPLOYMENT  
RELATIONS BOARD

STATE OF OHIO FACT FINDING PANEL  
OF THE  
STATE EMPLOYMENT RELATIONS BOARD

Nov 6 10 33 AM '97

IN THE MATTER OF:

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THE CITY OF CHEVIOT, OHIO \*  
and \*  
AFSCME OHIO COUNCIL 8 \*  
LOCAL 1093 AFL-CIO \*

CASE NO. 97-MED-03-0312

Date of Hearing: September 18, 1997

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M. JAMES ABERNATHY  
AS FACT FINDER

DATE OF REPORT: November 5, 1997

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## I. FACTS

The Fact Finding Hearing was held on September 18, 1997 at the City of Cheviot, Ohio, Harrison and Lovell Avenues, 45211.

The parties were represented as follows:

1. For the City: Edward T. Lameier, Councilman  
4214 Churchview Lane  
Cheviot, Ohio 45211  
(513) 287-7585 - Office
2. For the Union: Thomas E. Ellis, Staff Representative  
1213 Tennessee Avenue  
Cincinnati, Ohio 45229  
(513) 641-2900 - Office
3. For the City and the Union: Several members of each party appeared. Their names and addresses are included as an attachment to this report.

## II. MEDIATION

Mediation was accepted and held with the two above representatives in attendance on August 20, 1997. This meeting was held at Union headquarters, 1213 Tennessee Avenue, Cincinnati, Ohio 45229. No issues at impasse and disagreements were resolved by mediation.

A. List of remaining issues at impasse and disagreement:

1. Item pertaining to Double Time.

Tentatively agreed upon by both the City and the Union. The City wants to re-open. The Union refused.

2. Item pertaining to an extra day off over and above the current days given under the prior contract dated June 1, 1994 through May 31, 1997.

Tentatively agreed upon by both the City and the Union. The City wants to re-open. The Union refused.

3. Wages.

The Union's final proposal was 7.0% over three (3) years and the City's was 1.0% over three (3) years. Both agree that this is the main issue and at stalemate.

### III. CRITERIA

In making finding of fact, the Fact Finder took into consideration in accordance with Rule 4117-9-05(J) of the State Employment Relations Board, all reliable information relevant to the issues before the Fact Finder. All reports, oral and written, and exhibits were scrutinized and weighed heavily in the Fact Finder's final report.

### IV. ISSUES

#### A. Position of the City

The City contends that the Union has refused to discuss its desire to eliminate two items that were tentatively agreed to by the parties while in negotiation. Those items are double time, that is, "Work performed on a legal holiday or the day observed as such, but not both shall be compensated for at the rate of double time (2X) in addition to the regular pay for the holiday." The other item is an additional day off over and above the current days given under the prior contract. The prior contractual agreement between the two parties is dated June 1, 1994 through May 31, 1997 and granted ten (10) holidays per year:

1. New Year's Day
2. Martin Luther King Day (third Monday in January)
3. President's Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Election Day (November)
8. Thanksgiving Day
9. Christmas Day

10. Employee's Birthday

The signed tentative agreement added one more day and was designated as "One (1) Personal Day Per Year."

At impasse was wages. The Union offered 7.0% over three (3) years and the City countered with 1.0% over three (3) years. No tentative agreement was signed on this issue.

B. Position of the Union

The Union is representing twelve (12) employees encompassing Laborer, Maintenance Department, Driver, Waste Collection Department and Laborer, Waste Collection Department. The parties met in negotiation on the following dates:

May 19, 23, 30, June 6, 11, 18 and August 4, all in 1997.

The Union feels the City is not bargaining in good faith on wages because the City did not put any wage proposals on the table until August 4, 1997. The proposal ranged from 0.5% over three (3) years to 1.0% over three (3) years.

The Union states that its proposals on wages was presented at the first meeting on May 19, 1997. They were:

May 19, 1997	3 years	8.0%	8.0%	8.0%
August 4, 1997	3 years	7.5%	7.5%	7.5%
August 4, 1997	3 years	7.0%	7.0%	7.0%

Both parties agree that in past negotiations with the City of Cheviot, wage increases were in the range of 4% or 5%. The Union argues that because the City recently settled with the Fire Fighter's Union at 4.0% over the next three (3) years and the Federal Order of Police (F.O.P.) and the City went to factfinding and both parties voted and approved a three (3) year contract with a 3.5% wage increase over three (3) years that should have some bearing on their contract and wages. The Union further contends that it was the City of Cheviot that countered the Union's proposal on holidays by proposing to give Veteran's Day and one (1) personal day for Election Day. The Union states that it accepted the City's counter proposal and both parties signed off on that tentative agreement.

The City does not dispute this history.

## V. DISCUSSION AND RECOMMENDATIONS

- A. It is now up to the Fact Finder to frame the issues and render recommendations.

Information placed in evidence denote that Edward F. Lameier is a Cheviot City Councilman and is the City's only negotiator for contract talks with AFSCME Ohio Council 8, Local 1093, Case #97-MED-03-0312. As such, it is assumed he has full power to negotiate with the Union on all items presented on the table and at impasse. Evidence submitted shows that he had full authority to sign off on tentative agreements, which he did, and to negotiate on issues at impasse. No city official or governing body has disputed that as not being fact. Both parties agree that the main issue at impasse is wages and they further agree that the City's position on re-opening two (2) items that were tentatively agreed upon is based in part that the City believes the Union's final wage offer of 7.0% over three (3) years was way out of line.

Based on the evidence submitted, the City and Union negotiators each had authority to bargain, negotiate and not only did they do that, but they agreed on the two proposals in question and signed them as tentative agreements. As a matter of record and submitted into evidence, tentative agreements were signed on a total of thirteen (13) proposals submitted to the Fact Finder.

City officials at the hearing say they disagree with their negotiator signing off on these two proposals. Yet no provisions were put in place to safeguard against this happening or providing shared authority.

## VI. RECOMMENDATION

- A. Opinion.

In the Fact Finder's mind, based on the evidence and reasons submitted, the Fact Finder finds no valid reason for including these two (2) items as issues at impasse. Therefore, they stand equal with all other items previously tentatively agreed upon as they withstood the same test of negotiation.

A tentative agreement is just that, at least until the Fact Finder's report is issued and considered by the City and Union, and in this case not an issue at impasse. To treat it otherwise would thwart and impede the collective bargaining process. In collective bargaining negotiations, the term "tentative agreement" indicates that the provision is accepted by both sides and therefore not an issue at impasse.

**B. In the Matter of Wages**

Both parties agree that the main issue at impasse is wages. The City proposed 1.0% over three (3) years and the Union proposed 7.0% over three (3) years. Evidence is submitted and verified by both parties denoting that past wage negotiations were in the range of 4.0% or 5.0%. The City's reason for submitting 1.0% over three (3) years is that it felt that the two (2) tentative agreements in question in this report plus a 1.0% salary increase over three (3) years was a fair economic package.

However, the City testified that it was prepared to negotiate a higher increase but the Union would not budge from 7.0% over three (3) years. The Union felt it was being held hostage on wages by the City's request to re-open the aforementioned tentative agreements. The Fact Finder took into consideration oral testimony, historical wage facts, evidence pertaining to inflation and current inflation information from the Federal Reserve Bank, Cincinnati Branch. The Fact Finder also took into consideration information from the City that it was willing to come somewhat up from its final position of 1.0% over three (3) years. The Union also indicated its willingness to come down from 7.0% over three (3) years provided the City would negotiate up from 1.0% over three (3) years.

Based on the aforementioned facts and evidence, the Fact Finder recommends a wage increase of 3.5% over three (3) years retroactive back to June 1, 1997, effective immediately.

**VII. SUMMARY OF RECOMMENDATIONS**

- A. The two (2) items of tentative agreement requested by the City to re-open not be a part of fact finding. The two (2) items should stand with all other tentative agreements until all other issues at impasse are resolved via the Fact Finder's Report. Any and all tentative agreements currently in place can be addressed if there is any disagreement upon both parties consideration of the Fact Finder's Report. (See OAC 4117-9-05-(P)).

**B. A wage increase for 3.5% over the next three (3) years retroactive to June 1, 1997, effective immediately for:**

- 1. Laborer, Maintenance Department**
- 2. Driver, Waste Collection Department**
- 3. Laborer, Waste Collection Department**

**Respectfully submitted,**

**M. James Abernathy  
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