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STATE EMPLOYMENT
RELATIONS BOARD

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	Case Nos. 97-MED-08-0818
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Fact-finding between:	*	
	*	
	*	Fact-finder:
Sylvania Township	*	
	*	Martin R. Fitts
and	*	
	*	
Teamsters Local 20	*	November 7, 1997
	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

Appearances

Representing Sylvania Township:

- Timothy C. McCarthy, Legal Counsel
- Lucille Laskey, Township Trustee
- Donald Finnegan, Jr., Township Trustee
- James Maxwell, Township Clerk

Representing Teamsters Local 20:

- Mark Sobczak, Business Agent
- Tamara L. Martin, Bargaining Committee
- S. Sue Tuite, Bargaining Committee

PRELIMINARY COMMENTS

The bargaining unit consists of administrative and clerical positions in Sylvania Township, including assistant zoning inspectors, administrative secretaries, assistant secretaries, and zoning clerk classifications. There are approximately 7 employees in the bargaining unit.

The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on October 24, 1997. The parties engaged in bargaining for the unit, with the last session held on November 3, 1997. This is an initial agreement, thus there is no collective bargaining agreement in place at this time.

The fact-finding hearing was held on November 5, 1997 in the hearing room of the Sylvania Township Trustees. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were ten issues at impasse: No Strike - No Lock Out; Sick Leave Bonus Days; Hours of Work, Workweek and Payday; Medical Insurance; Life Insurance; Time Clock; Acting Time and Court Time; Entire Agreement; Wages; and Duration. The parties declined mediation at the hearing, and thus ten issues were submitted for Fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented in writing to the Fact-finder prior to the November 5, 1997 hearing.

ISSUES AND RECOMMENDATIONS

Issue: No Strike - No Lockout

Positions of the Parties

The Union proposes a clause in this section of the Agreement that would provide protection from discipline for any employee of this bargaining unit should they refuse to cross a primary picket line. It noted that this is a fairly common clause in labor contracts, including the Road Department which is located in the same township building as five of the seven employees of this bargaining unit.

The Employer opposes the inclusion of this clause in the Agreement, stating that it would hinder the Township's ability to provide service to the public if these employees refused to cross picket lines at the main township office building.

Findings and Recommendation

The Employer provides little evidence of harm that it would endure if this

clause were included in the labor contract. Its objections are weakened by the fact that it has agreed to this for the larger Road Department unit. It would seem unfair for the employees of this considerably smaller unit to have less protection afforded to them than the Road Department employees. The Fact-finder recommends the Union proposal, and thus recommends that ARTICLE X - NO STRIKE-NO LOCKOUT include the following paragraph:

It shall not be a violation of this Agreement, and it shall not be cause for discharge, discipline or permanent replacement for an employee to refuse to enter upon any property involved in a primary labor dispute or to refuse to enter upon any property involved in a primary labor dispute or to refuse to go through or walk behind any primary picket line, unless a reserved gate has been established, including the primary picket line of the Union party to this Agreement and including primary picket lines at the Employer's own place of business or jobs.

Issue: Sick Leave Bonus Days

Positions of the Parties

The Union proposes a clause in the ARTICLE XIII - SICK LEAVE that would provide employees with two sick leave bonus days off for every six month period that they do not miss work for reasons other than paid vacations, holidays, approved bereavement leave, military leave, personal leave, sick leave bonus days or jury duty. The Union argued that this clause appears in the police department's collective bargaining agreement with the Township, and this unit would like parity with that.

The Employer opposes the inclusion of this clause in this unit's Agreement. It stated that this appears in the police contract due to a trade off for a section that dealt with excessive absenteeism. It argued that in isolation this is little more than an

unnecessary benefit of extra days off, which will result in added cost to the Township.

Findings and Recommendation

The Fact-finder agrees with the Employer that there is no justification for this clause and benefit to appear in this Agreement. The Union offered no compelling reason for its inclusion other than "me too," and in this instance that is simply not enough. The Fact-finder does not recommend the inclusion of the Union's proposal in this Agreement.

Issue: Hours of Work, Work Week, and Payday

Positions of the Parties

The parties disagree over the hours that would constitute the normal work day for the employees in the bargaining unit. At the present time the employees work from 8:00 am to 4:30 p.m., and receive a thirty minute unpaid lunch.

The Union would like to have a workday from 8:00 am to 4:00 p.m., with a paid lunch break of twenty minutes. To accommodate the Township's desire to have the offices covered until 4:30 p.m., the Union proposed a clause allowing employees to flex their hours by up to one hour per day, provided that the Employer is given notice one workday in advance. The Union noted that the employees have received cross training, and can adequately cover the extra half hour when some of the employees would not be in the office.

The Employer stated that the Township had gone to the day ending at 4:30 p.m. rather than 4:00 p.m. in order to better serve the public. It noted that two of the

seven employees in this bargaining unit work in different offices, where they are the only bargaining unit employee in the building. Thus it would be impossible for another member of this bargaining unit to cover them with flex time. It was also argued that the employees have adequate leave provided for them in the Agreement that would mitigate the need for the flex time.

Findings and Recommendation

The Fact-finder believes that the flex time proposal of the Union is unworkable for this bargaining unit. The Employer properly points out the problems with covering the two employees who are in different buildings. Also, even for those in the main building it would be difficult, as they work in different offices. It is one thing to cross train employees to cover for occasional absences and vacations, it is quite another to cover for employees on a daily basis. Another troubling aspect of the Union's proposal is that the employees would have the right to flex their work schedules with only one day's notice to the Employer. The Employer would be left with little control of the daily work schedule of the employees, which could create an extremely burdensome situation.

For these reasons the Fact-finder recommends the adoption of the Employer's proposed Section 1 for ARTICLE XV - HOURS OF WORK, WORKWEEK AND PAYDAY:

ARTICLE XV

HOURS OF WORK, WORKWEEK AND PAYDAY

Section 1. The normal workday for employees covered by this Agreement shall be eight (8) hours beginning at 8:00 a.m. and ending at 4:30 p.m. with one unpaid lunch period of thirty (30) minutes. During each workday, a fifteen (15) minute paid break shall be allowed in the a.m. and a fifteen (15) minute paid break shall be allowed in the p.m.

Issue: Medical Insurance

Positions of the Parties

The employees in this bargaining unit do not currently have a co-pay for their medical insurance premiums. The Employer is proposing that employees with single coverage pay \$10/month toward their premium, while employees with family coverage would pay \$22/month. The Employer believes that this is a small charge to pay for the quality of the benefits received. It noted that the other bargaining units in the Township have this co-pay.

The Union characterized this as an attempt to take an existing benefit from the employees. It noted that police and fire contracts call for benefits such as uniform allowances and holiday stipends that this Agreement will not provide for its unit's members.

Findings and Recommendation

The Fact-finder agrees with the Employer's contention that it is unfair to characterize uniform allowances and holiday stipends for safety services strictly as benefits in the same sense as medical insurance, as those allowances and stipends deal with issues specific to the unique nature of those jobs.

This Fact-finder is normally inclined to recommend reasonable insurance co-pays that mirror other bargaining units agreements with a political subdivision, such as is proposed here by the Employer. In most instances this is primarily the result of the political subdivision's argument that it is sensible and fair to have uniformity among all of its employees. In the instant case, however, this Employer makes no such claim. In fact, despite the other collective bargaining agreements calling for the co-pay, the employees now represented by this bargaining unit have

never before been required to pay anything toward their medical coverage. The remaining exempt Township employees also do not contribute anything toward their medical coverage premiums. Had this been an issue of serious concern for the Employer, it would seem reasonable that it would have already instituted a co-pay for the all of the employees for which it could have unilaterally implemented such a co-pay without the necessity of bargaining for it. In essence, the Employer has failed to provide a compelling argument to take this benefit of fully paid health care premiums away from these employees. For this reason the Fact-finder does not recommend the inclusion of the Employers proposal for a Section 3 - Copayments clause in this Agreement.

Issue: Life Insurance

Positions of the Parties

The Union is asking for each of the employees in the bargaining unit to receive \$15,000 of life insurance. It cited the presence of such a clause in the Township's agreements with other bargaining units, and asks for parity with the benefits provided in those agreements.

The Employer argued that the insurance clause in other agreements is a result of several rounds of collective bargaining over the years. While a number of benefits such as holidays and vacation in the tentative agreements already reached by the parties are provided at the same level as the other bargaining units, it feels that this unit should not achieve parity with all benefits in its first agreement. It also noted that while the police contract calls for \$15,000 of life insurance, the firefighters agreement has not yet been finalized, although the Fact-finders recommendation in that matter is for \$15,000 of life insurance. The Employer also noted that the Road Department agreement calls for only \$10,000 of life insurance.

Findings and Recommendation

It seems only fair to the employees in this bargaining unit that they be treated equally in regard to life insurance as the other employees in the Township covered by collective bargaining agreements. The financial burden of adding the seven employees of this unit to the cost of providing life insurance for all the other employees covered by collective bargaining agreements will be minimal. The longevity of the bargaining relationships between the Township and the other bargaining units has no relevance in this matter, only the substance of what is provided to those employees as benefits is relative as a comparable for the employees of this bargaining unit.

The Fact-finder can only speculate that the variance in the amount of life insurance provided for in the Road Department agreement compared to the police agreement and the recommended fire agreement has to do with the relative risk inherent in police and fire operation compared to road operations. Following this logic, it would seem that the employees in this bargaining unit should be treated equally with the road department, and receive \$10,000 of life insurance coverage. Thus, the Fact-finder recommends that ARTICLE XXII - LIFE INSURANCE reads as follows:

ARTICLE XXII LIFE INSURANCE

Upon the effective date of this agreement, the Employer shall provide a \$10,000 group term life insurance plan covering the employees in this bargaining unit.

Issue: Time Clock

Positions of the Parties

The Union proposed inclusion in ARTICLE XXIX - MISCELLANEOUS PROVISIONS of the Agreement a section that would state that the employees of this bargaining unit would not be required to punch a time clock, but rather would record time worked on a sign in/sign out sheet. The Union stated that about a year and a half ago the time clock was introduced, and created a lot of animosity among the employees that are included in this new bargaining unit. It noted that police and fire employees are not required to punch a time clock. It also noted that two of the employees in this bargaining unit could not feasibly punch the time clock, as they work in other locations where a time clock does not exist. It feels that it is unfair to the employees in the main Township building that they are not trusted by the Township to honestly and accurately record their time on time sheets, while others are trusted to do so. It admitted that this is not a factual issue, but rather an emotional issue with the employees.

The Employer opposes the inclusion of this clause in the Agreement. It stated that the time clock is simply a method of recording the hours worked by the employees. It expressed concern that the Union's proposal, by mandating a sign-in sheet, would limit the Employer's ability to adopt any other measure to record time worked, including any possible tie-in of a computerized card swipe system with payroll preparation.

Findings and Recommendation

The Fact-finder understands the Employer's desire to have control over the method of recording the time worked of the employees in this bargaining unit, as well as all of the others. However, given the fact that the employees in this

bargaining unit all work in close proximity to management personnel, it is hard to understand why a time clock is necessary rather than a sign-in sheet, especially given that other employees of the Township, as well as two in this bargaining unit, are not required to punch in. The Employers argument that some of the employees are occasionally required to be present to take minutes of meetings in the evening is not persuasive, since police and fire employees do not punch a time clock yet work at all hours of the day, 365 days a year. Regardless, it is not the Fact-finder's function to pass judgment on the soundness of the Township's management practices. The Fact-finder agrees with the Employer that to have the method of how it is to record the hours worked by these employees specified and limited by this Agreement would be too restrictive to its right and ability to manage and direct its workforce, and thus does not recommend the adoption of the Union's proposal.

Issue: Acting Time and Court Time

Positions of the Parties

The Union is asking for the inclusion of two clauses in this section of the Agreement. The first deals with the assistant zoning inspector receiving "acting pay" upon the absence of the zoning inspector for blocks of eight hours. The union argued that when the zoning inspector is on vacation or military leave, which can total seven weeks of the year, the assistant zoning inspector performs the duties of the zoning inspector. Further, the Union noted that the person in this position presently has actually trained seven new zoning inspectors over the years.

The Employer argued that the title "assistant zoning inspector" implies that the person in that position will fill in for the zoning inspector in his absence. It notes that in recognition of that responsibility, the person that presently holds that position is paid the highest rate in the new bargaining unit. Further, although she

does not receive "acting pay" currently, when the position of zoning inspector has been vacant she has been paid a higher rate when serving as 'interim" zoning inspector.

The second issue is a proposal from the Union that calls for the employees of this bargaining unit to be compensated for a minimum of two hours pay at time and one-half their hourly rate for court appearances that are not contiguous to the beginning or end of their regular shift. The Employer questioned the need for this clause, noting that the employees of this bargaining unit would rarely be called to testify in court, and that they all normally work the same day time hours that courts are in session.

Findings and Recommendation

Regarding the first issue, that of "acting time" for the assistant zoning inspector, the Fact-finder is sympathetic that the assistant zoning inspector's workload would increase when the zoning inspector is absent, but that in and of itself is not a compelling reason to require "acting pay" in this Agreement. The Union compared this to "acting pay" sections in police and fire contracts, but this is an unfair comparison. In the police and fire services, acting pay offsets the increased liability and responsibility incurred by the person who assumes the acting position. These responsibilities and liabilities are outside of what would normally be required of those individuals, and given the nature of police and fire fighting may result in immediate life or death consequences. The Union simply did not provide enough evidence that the assistant zoning inspector would assume substantially greater responsibilities and liabilities when filling in during the absence of the zoning inspector. For this reason the Fact-finder does not recommend the inclusion of the Union's proposed Sections 1 & 2 of ARTICLE XXV - ACTING TIME AND COURT TIME in this Agreement.

Regarding the second issue, the Fact-finder agrees with the Employer that it is extremely unlikely that the members of this bargaining unit would ever find themselves required to be in court during hours other than their regular working hours. Given the nature of these jobs and the hours of their normal work day, the Fact-finder finds no reason to include the Union's proposed Section 3 of ARTICLE XXV - ACTING TIME AND COURT TIME in this Agreement, and therefore does not recommend its inclusion.

Issue: Entire Agreement

Positions of the Parties

The Employer proposes including a so-called "zipper clause" as ARTICLE XXVII - ENTIRE AGREEMENT. This clause would specify that during the life of this Agreement neither the Union nor the Employer would be required to negotiate any subjects not covered in therein. The Employer believes this to be a fairly standard clause, and noted that the Agreement does have a provision for a grievance procedure ending with binding arbitration.

The Union is opposed to this clause, arguing that since this is a first agreement between the parties, it is likely that in the three years of this Agreement issues will arise that were not thought of during this round of negotiations that will need to be addressed.

Findings and Recommendation

The Fact-finder agrees with the Employer that this is a fairly standard contract provision. The Union argument that things may arise during the course of this contract that were not thought of during negotiations is valid, but no more so for

this bargaining unit than for any other bargaining unit, whether in the public or private sector. In addition to the grievance procedure, which is really only useful for disputes as to the meaning of what is contained in the Agreement, things not dealt with in the Agreement can be dealt with by letters of understanding between the Employer and the Union. Nothing in the proposed "zipper clause" precludes the parties from negotiating new items, it simply states that neither party is obligated to do so. Thus, the Fact-finder really sees no difference in effect whether this clause is included in the Agreement or not, but will buy the Employer's argument that this clause brings some closure to the negotiating process. Thus the Fact-finder recommends that ARTICLE XXVII - ENTIRE AGREEMENT read as follows:

ARTICLE XXVII
ENTIRE AGREEMENT

The parties agree that this Agreement is intended to cover all matters affecting wages, hours, and other terms, and all conditions of employment and similar or related subjects, and that during the term of this Agreement neither the Employer nor the Union will be required to negotiate on any further matters affecting these or any other subjects not specifically set forth in this Agreement.

Issue: Wages

Positions of the Parties

The union proposes a restructured pay scale for the employees which would result in considerable increases in the first year, retroactive to July 8, 1997, and an across the board increase of 5% on July 8, 1998. The time frame coincides with its proposal for the effective date of this Agreement, which will be dealt with later in this report. The Union presented a number of comparables to show that the employees of this unit receive considerably lower wages than those in the

surrounding communities. It argued that the large initial increases would result in bringing the employees of the bargaining unit in parity with others.

The Employer proposes increases across the board of 3.5% retroactive to November 1, 1997, 3.0% on November 1, 1998, and 3.0% on November 1, 1999. This coincides with its proposed effective date for this Agreement. It noted that the police agreement recently negotiated by the Township calls for a 4% increase, and the firefighter's tentative agreement calls for 4%/4%/3.5% over three years. It noted further that the median settlements for collective bargaining agreements nationwide have been around 3.0%, and that it is proposing slightly higher than that in the first year. Also, it is proposing that the increases begin with its proposed effective date of the Agreement, which is two months earlier than non-bargaining unit employees, as these people were, have received increases in the past.

Findings and Recommendation

The Union's comparison of the wages of its members to others in the surrounding area may have some merit, but it is unreasonable to believe that such large increases could be won in a single round of negotiations. The union acknowledged that the press of time limits had resulted in its proposal being more of an initial starting point than a final offer. While the employer's proposal is more reasonable, its wage increases are lower than the Employer has negotiated with other bargaining units. In addition to the increases noted above, the Road Department's recently finalized agreement calls for 4%/4%/3.5% over three years, which mirrors the wage increases tentatively agreed upon for the firefighters. As a matter of fairness to the employees of this bargaining unit, a similar percentage increase is in order. To recommend more would be to ignore the fact that the unit will make considerable gains in workplace rights and benefits as a result of this Agreement.

The report will go into detail later regarding the recommendation for the effective date of this Agreement, but the Fact-finder's recommendation in this section is in concert with that recommendation. Thus the Fact-finder recommends that ARTICLE XXIII - WAGES read as follows:

ARTICLE XXIII

WAGES

Effective November 1, 1997 the employees shall receive a 4% increase in wages. Effective November 1, 1998 the employees shall receive a 4% increase in wages. Effective November 1, 1999 the employees shall receive a 3.5% increase in wages.

Issue: Duration

Positions of the Parties

During negotiations the parties agreed upon a three year term for the Agreement, but failed to agree upon the effective date of the Agreement. The Union proposes that the Agreement be effective retroactive to July 8, 1997. The Employer proposes that the Agreement be effective retroactive to November 1, 1997.

Findings and Recommendation

In keeping with the recommendation earlier in this Fact-finding report regarding wages, the Fact-finder recommends a three year Agreement effective on November 1, 1997. As noted earlier, this represents a fair three step increase in the bargaining unit's wages, and also allows this unit to closely follow the expiration of other collective bargaining agreements in the Township. The Fact-finder recommends that Article XXIX - DURATION read as follows:

ARTICLE XXIX
DURATION OF AGREEMENT

This Agreement shall be effective as of November 1, 1997, and shall remain in full force and effect through October 31, 2000. It shall automatically be renewed from year to year thereafter, unless either party shall have notified the other, in writing, at least sixty (60) calendar days prior to the anniversary date that it desires to modify the Agreement.

Additional recommendations of the Fact-finder

In addition to the recommendations outlined above, the Fact-finder has reviewed all the tentative agreements reached by the parties through the course of their negotiations and hereby considers them a part of this report and recommends them to the parties as well.

Further, in the event that the adoption of this Fact-finder's report results in the deletion of an entire article or section and thus renders the remaining article or section numbers out of order, it is recommended that the remaining articles or sections be renumbered to accurately reflect their sequential appearance in the new Collective Bargaining Agreement.



Martin R. Fitts 11/7/97
Fact-finder