

LOCAL 3356, AFSCME, OHIO COUNCIL 8

(UNION)

- and -

THE CITY OF GIRARD, OHIO

(CITY)

Case No. 97-MED-10-1034

SEP 23 3 44 AM '98

FACT - FINDER'S REPORT

September 23, 1998

Proceedings before Jared D. Simmer, Fact-Finder. The undersigned was chosen by the parties to serve in the role of Fact-Finder in the above-captioned case. Pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code, the Fact-Finder was chosen on December 1, 1997.

I. APPEARANCES

FOR THE CITY:

At the hearing on September 10, 1998: Louis Adovasio (Councilman-at-large), and John Alberty (Attorney for the City).

FOR THE UNION:

For the Union, Mark Carlson (Staff Representative, AFSCME Ohio Council 8), Thomas Watts (President, Local 3356), John Migliozi and Elizabeth Zagorski (Vice President, Local 3356).

II. BACKGROUND

This proceeding involves collective bargaining negotiations between AFSCME Ohio Council 8, Local 3356, and the City of Girard, Ohio (City). The OPBA has had a collective bargaining relationship with the City since 1984. The unit, consisting of forty-eight (48) full-time employees, is comprised of employees doing service, maintenance and clerical duties of the Water Maintenance Department, the Water Treatment Plant, the Auditor's Office, the Treasurer's Office, the Utility Billing Office, the Street Department, Sewer Maintenance, and the Mayor and Service Director's Offices.

Prior to hearing, the parties had met numerous times and negotiated a tentative agreement. However, the bargaining unit voted the proposed settlement down. In the weeks following, the parties recommenced negotiations and bargained to impasse. The contract expired on December 31, 1997. Negotiations, and the date of the fact-finding hearing, were extended twice by mutual agreement of the parties.

The hearing was held on September 10, 1998 in City Hall. The parties requested that the Fact-Finder delay issuance of his Report and Recommendations until September 23, 1998.

III. ISSUES

During the course of good-faith negotiations covering a number of sessions, the parties tentatively agreed to all issues but the ones addressed below. Those mutually-resolved provisions of the contract which are not addressed below are hereby formally recognized and adopted by the Fact-Finder.

IV. FACT-FINDER'S REPORT AND RECOMMENDATIONS

In issuing this Report and Recommendations, the Fact-Finder took notice of all the oral and written testimony presented by, and as stipulated by, the parties, as well as those six factors which the Ohio State Employment Relations Board requires, including but not limited to:

1. Prior collective bargaining agreements, if any, between the parties.

2. Comparison of the issues in the instant case with those issues involving other public and private employees doing comparable work, giving consideration to the factors peculiar to the area and classification involved.
3. The public interest and welfare, the ability of the employer to finance and administer the items involved, 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.
6. Such other factors, which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

In the preparation of this Report and Recommendations, the Fact-Finder did in fact consider these six (6) factors.

This Report sets forth recommendations which the Fact-Finder believes are reasonable and fair and which both parties can be comfortable recommending to their respective constituencies, although acceptance of the same will involve a degree of mutual sacrifice on the part of both parties.

Opening Statements:

Both parties took the opportunity to make opening statements; there was some difference of opinion between the parties regarding which issues remained at odds, however.

The Union characterized the open contract items as follows: clothing allowance, license fees, and wages. As to wages, the Union asked for increases of \$.45/hour in the first year of the contract, \$.45/hour in the second, and \$.47/hour in the third, with any raises in the first year retroactive to January 1, 1998. As regards the clothing allowance, the Union requested that the current clothing allowance provisions of the contract be extended to all members of the bargaining unit. The Union concluded by

proposing a \$.10/hour pay increase to any employee who obtains and continues to hold a valid commercial drivers' license.

In its opening statement, the City contested the extension of the clothing allowance as unnecessary. It offered wage increases of 3.5% effective May 21, 1998 (the date of the tentative agreement), 3.5% effective at the commencement of the second year of the contract and 3.5% at the commencement of the third. The City also proposed elimination of the current "me, too" provision of the contract and a reduction of the employees' current paid lunch break from one (1) hour to one-half (1/2) hour.

REPORT AND RECOMMENDATIONS

Article 23.1 – Compensation.

Union

At the hearing, the Union requested requested wage improvements of \$.45/hour, \$.45/hour and \$.47/hour for each years of the three (3) year contract, with wage adjustments retroactive to January 1, 1998.

The Union calculated that percentage increases of this magnitude equaled 3.5% of the average wage of the bargaining unit in each year of the agreement. In support of its position, the Union pointed out that not only could the City afford these increases, but 3.5% is the amount of the increase that all other City units have received in their most recent contracts.

City

The City offered 3.5% in the first year of the contract (an amount basically indistinguishable from the Union's proposed \$.45/hour), but with retroactivity only back to May 21, 1998. In support of its position, the City contended that any wage increases should be retroactive only back to the date of the tentative agreement between the parties, and not to the first day following expiration of the old contract.

Finding and Recommendation:

It is apparent that both parties proposed wage increases over the life of the contract are substantially similar. Since the parties are in basic agreement on wage increases, the Fact-finder does not feel it necessary to provide supporting rationale for his finding that the wage increase should be \$.45/hour in the first year, \$.45/hour in the second year, and 3.5% in the third year.

As to the effective date of retroactivity, the City's position, if adopted, would amount to a de facto punishment of the Union for failing to ratify the tentative agreement on May 21. However, rather than full retroactivity to January 1, to partially offset the economic improvements discussed below, the Fact-Finder recommends that retroactivity be calculated back to February 1, 1998.

Article 28.10 – License Fees

Union

Because the City currently rewards other employees for obtaining job-related certifications and licenses, the Union proposed that bargaining unit members who receive commercial drivers licenses (CDL) should receive additional pay of \$.10/hour.

City

The City responded that it should not be obligated to pay employees for obtaining a license that is required by the federal government, and not it.

Finding and Recommendation

The Fact-Finder does not find it unreasonable, nor is it unusual in Ohion municipalities, to compensate employees for obtaining and maintaining a CDL. Further, with additional compensation comes additional obligations on the part of employees, not the least of which is the potential threat of job loss should a CDL license be revoked. Accordingly, the Fact-Finder recommends that all bargaining unit employees who are required to hold a CDL, and continue to do so, should be compensated for the same. The Fact-Finder recommends that employees in good standing who have obtained and

successfully maintained a CDL for the preceding eleven months (i.e., 1-1 to 11-30) receive a \$200 bonus check, payable in the first paycheck in December (via a separate check and with taxes withheld). To be an employee in good standing and eligible for the bonus, an employee must be required to have a valid CDL license for his/her position, have earned the CDL by January 1 of the year in which a bonus is paid, have 5 or less accrued, accumulated points on his/her Ohio drivers license for moving violations or DUI infractions, and sustained no loss or revocation of the CDL at any point during that year. If, prior to the end of the year, anything results in an employee losing eligibility to receive the bonus after already receiving the same, the Union and the City should negotiate a reasonable repayment schedule for the employee to reimburse the City.

Article 28.2 – Uniform Allowance

Union

The Union sought to extend the clothing allowance provisions of the contract to all members of the bargaining unit, basing its position on the fundamental fairness issue that custodians, van drivers and clerical workers' clothing, while not technically required uniforms, becomes damaged and worn, too. Therefore, it is proposed that they be eligible for the same allowance payments as uniformed City personnel.

City

The City countered that this proposal, amounting to an unwarranted new benefit, constituted a back-door wage increase for custodians, van drivers and clerical workers and so was unjustified.

Finding and Recommendation

Having found that this proposal lacked sufficient merit or supporting substantiation, the Fact-Finder recommends no change to the language of Article 28.2.

Skills Enhancement Bonus

As a result of discussions held over the course of the hearing, the parties tentatively agreed to a skills enhancement provision in the contract. Accordingly, the Fact-Finder recommends formal adoption of this item as follows: bargaining unit employees who satisfactorily complete a course of study that is prescribed by their supervisor or other City representative, shall be eligible to receive a skills enhancement bonus. This bonus, capped at \$250 annually, before taxes, shall be paid to eligible employees in a separate check, no more than once per year.

This recommended language is to be inserted in the appropriate contract provision by mutual agreement of the parties.

Article 28.11 – Miscellaneous Provisions.

City

The City proposed deletion of the “me, too” provision in the contract, contending that unnecessarily restricts the parties in negotiations and is an undue hardship on the City in its negotiations with other bargaining units.

Union

The Union resisted attempts to delete this language, stating that it was not necessary.

Finding and Recommendation

The Fact-Finder finds that the City was unpersuasive in its rationale for deleting the “me, too” language and so recommends that the current language in this article remain unchanged.

Article 14.1 – Hours of Work

City

The City proposed reducing unit employee lunch hours from 1 hour to ½ hour, since, in their view, 1 hour was viewed by the taxpaying public as excessive.

Union

The Union resisted attempts to delete this language, stating that it was not necessary and further that this unit has historically received an extended lunch break to reflect the fact that it does not receive two, 15 minutes during the day.

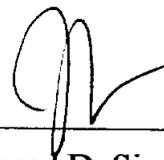
Finding and Recommendation

The Fact-Finder agrees with the Union and finds that the City was unpersuasive in its rationale for reducing the lunch hour, and so recommends that the current language in this article remain unchanged.

In conclusion, the above Findings and Recommendations include the entirety of the Fact-Finders' Report.

Issued: September 23, 1998

Respectfully submitted,

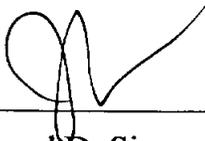


Jared D. Simmer

Fact-Finder

CERTIFICATE OF SERVICE

I hereby certify that the above Fact-Finder's Report and Recommendations were served upon the following parties, to wit, the City of Girard, Ohio (via Mr. John K. Alberty) and AFSCME, Ohio Council 8, Local 1260 (via Mr. Mark Carlson) by overnight mail service, and upon the Ohio State Employment Relations Board (via G. Thomas Worley) by first class mail, this day of September 13, 1998.



Jared D. Simmer
Fact-Finder