

STATE OF OHIO

Dec 24 10 03 AM '97

THE STATE EMPLOYEE RELATIONS BOARD
FACT FINDING REPORT

Dec 24 10 03 AM '97

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In Re:

City of New Lexington
AFSCME, Ohio Council 8, Local 2020A

Case No. 97-MED-10-1076

FACT FINDING REPORT

The undersigned, Steven L. Ball, appointed as State Employee Relations Board fact-finder, makes the following report:

I. Hearing

This matter was heard at the City Hall, New Lexington, Ohio commencing at noon, December 15. The following union and employer representatives were in attendance for part or all of the proceedings.

Union

Tammy Carsey
Terry Moore
Jerry Rehart
Chuck Hicks
Kathy Dannison

City of New Lexington

Mark Howdyshell, Law Director
Mayor Danison

Also attending: Sandra Berry

II. Mediation

This matter was the subject of a tentative agreement on December 9 (copy attached as Exhibit 1), which was rejected by a vote of the union. Thereafter, mediation was attempted but with no resolution. The issues remaining unresolved at mediation were the union demands for

reimbursement of commercial drivers license fees for those employees required to have them, and \$.10 per hour additional pay for drivers with those licenses.

III. Criteria

The parties were advised that consideration would be given to the criteria listed in §4117.14 O.R.C. and Rule 4117-9-05(K) of the State Employee Relations Board, as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the 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, 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;
- (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.

IV. Issues and Recommendations

Both parties indicated a desire to have all issues raised during negotiations, and some new ones, to be the subject of this Report, the City and Union stating that their last proposals were no longer on the table.

In recognition of those current positions, the Fact-Finder took testimony and accepted written evidence as to each and every proposed change to the existing agreement. However, the Fact-Finder considers that the positions of the parties immediately prior to the rejection of the tentative agreement must be the primary focus of this report and recommendation, and “retreating” to original positions or adding new issues at this stage is impractical and unrealistic.

The discussion below will be referenced to provisions of the existing agreement (including modifications by Memoranda of Understanding added thereto), expiring December 22, 1997 (and extended to January 10, 1998 by agreement). All provisions of that agreement (including all modifications by Memoranda of Understanding) have been agreed by the parties to continue in full force and effect in the new agreement, except as stated below.

Finding of Fact - Article 1. Recognition

The union's proposal was agreed to by the City "if consistent with the SERB letter of recognition dated May 22, 1997." The proposed language is found to be consistent with that letter.

Recommendation

The union's proposed language attached hereto as Exhibit 2 should be adopted.

Finding of Fact - Article 2. Dues Check-Off and Union Security

The union seeks the ability to have employees "check-off" contributions to the union's national political action committee. The City opposed, arguing that the union should collect its own donations and that the check-off would involve additional employee time in implementation. However, it is obvious to the Fact-Finder that any additional burden on payroll procedures and resulting cost to the City would be minimal.

Recommendation

The union's proposal for a payroll deduction for voluntary "PAC" contributions as stated in the attached Exhibit 3 should be adopted.

Finding of Fact - Article 7. Job Posting and Transfer Procedures

The City has proposed deleting Section 6 in its entirety. The union objected to this proposal as one which had not been brought up before fact-finding. The section provides that if an employee fails to obtain "certification" (assumed by all to mean a certificate or license for water or sewer plant trainees) that the employee would be entitled to transfer to another department.

Given the relatively small size of this work force, it appears that this section would or could work a hardship on the employer, as the "transfer" is not conditioned upon the availability of an opening elsewhere, and may conflict with Section 4. However, the matter was not raised until fact finding and testimony established that the section had not, to anyone's memory ever been used. The fact-finder does not believe it is in either party's interest that he provide alternate language to "clean up" any ambiguity which may exist in this area at this late stage in the process and outright deletion of the current language is not justified by any record of use.

Recommendation

The City's proposal should be rejected.

Finding of Fact - Article 8. Layoff and Recall

The union proposes language which defines the time of notice for layoffs or job abolishments, requires that such occur only because of lack of work or funds, and delineates a 14 day notice for return to work, and that those on the recall list remain for 36 months.

The City proposes to keep the current language. This provision has not been used in recent memory, and it appears that the current language and appeal rights (as in the case of a

recent “split” of positions) provide sufficient safeguards to the employees while giving the employer needed flexibility.

Recommendation

The union’s proposal should be rejected.

Finding of Fact - Article 9. Hours of Work and Overtime

The union proposes that the city provide a hot meal whenever an employee works 4 hours overtime. The City states that it has no means to do so and that the employees can take time to eat and should be responsible for bringing their food or purchasing it. This does not appear to be a recurring problem, and implementation would be unworkable given the resources available to the City.

Recommendation

The union proposal should be rejected.

Finding of Fact - Article 10. Disciplinary Procedure

The City proposes that limitation periods for the use of oral and written reprimands be deleted. No examples were given of any use of this provision, which has been in prior contracts, and the fact-finder sees no need to alter the current language, especially with the issue arising only at the last minute.

Recommendation

Article 10, Section 3 should remain as in the current agreement and the City’s proposal should be rejected..

Finding of Fact - Article 11. Leaves of Absence

The union seeks to lower, from ten to two, the years of service (in the City or other

political subdivision) which a retiring employee must have to be paid for 25% of accrued sick leave (up to a maximum of 120 days). The City argues that the employees already have the alternative of a cash benefit for unused sick leave (Section 4), which is a sufficient reward to those employees not abusing sick leave and those maintaining good health habits. The fact finder was not presented with evidence to show any reasonable need to change the current language of the agreement, and it appears that other comparable contracts do not establish any norm in this regard. The union also proposes that language reciting the Family Medical Leave Act be included in the agreement. The City argues that the law applies, whether or not it is in the contract and the fact finder agrees.

Recommendation

The union's proposals should be rejected.

Finding of Fact - Article 12. Health and Safety

The union has proposed vaccinations and tests for controlled diseases for workers coming into contact with sewage. The proposal appears both necessary and reasonable, and the City has already implemented portions thereof.

Recommendation

The language agreed to in the tentative agreement should be adopted.

Finding of Fact - Article 14. Holidays

The City proposes deleting personal days and not listing each holiday, but rather designating any holiday ordered by the State, federal, or city governments. In the past, the City increased personal days in lieu of wage increases, and says that now the personal days are no longer equitable. However, the current contract granted significant pay raises and retained the

four personal days. The clerical employees recently joining the bargaining unit have already had their personal days reduced from 6 to 4.

Recommendation

The City's proposal should be rejected.

Finding of Fact - Article 14. Holidays

The union proposes that employees working four ten-hour days be paid for ten hours holiday pay. This appears to be in accordance with other terms of the contract and is being implemented by the City already. The union also proposes that two additional personal days be granted for all clerical employees. The clerical employees received 6 days prior to joining the bargaining unit. No other rationale was given as to why clerical employees should receive more personal days than other employees.

Recommendation

The union's proposal regarding holiday pay should be adopted (Exhibit 4) and its proposal regarding personal days should be rejected.

Finding of Fact - Article 15. Vacation

The union proposes to provide for unlimited 1 day vacations. Currently they are entitled to a maximum of four one-day vacations. The City maintains that it needs the flexibility provided by the current language and that the four days are sufficient. There does not appear to be any accepted "norm" in this regard in other comparable communities.

The union also proposes to increase "in special circumstances" the cap of 160 hours accrued vacation. The City argues that "special circumstances" is too vague to be evenly enforced. Also, the current language appears to exceed benefits granted in many other locales.

The union also proposes that the contract be amended to provide for approval of vacation by the City Administrator or his or her designee. The City Administrator's post is now vacant and his or her duties are being handled by the Mayor.

The current vacation and personal days provisions appear as liberal as other municipalities of like size. "Special Circumstances" exceptions to the vacation accrual limit appears subject to constant complaint, and unequal enforcement. It appears that no vacation has been or is likely to be denied because of the lack of an Administrator.

Recommendation

The union's proposals should be rejected.

Finding of Fact - Article 16. Wages

The union and City agreed tentatively to a \$.25 per hour raise for each year of the contract. The union proposes that all employees receive \$1.00 per hour increases, and that the City implement a new longevity bracket for employees serving 10 or more years (4.5% of base rate). The union also proposes that license costs be reimbursed for commercial drivers licenses (CDL) and increased pay for those holding water and wastewater licenses and commercial driver's licenses.

The union's last proposal was to pay the employees requiring CDL's an additional \$.10 per hour and reimburse their license expenses.

The union established that longevity pay in other communities is standard. However, no analysis was provided to show what the implementation of a ten year bracket would cost the City, nor why a ten year bracket would be preferable to other alternatives.

The City argues that wages for the City employees are comparable to similar municipalities in the area. The fact finder notes that while the employees are paid generally on the lower end of comparable wage rates, the proposed \$.25 yearly increases will at least maintain the City's position as compared to those other communities at a time when the City has faced financial difficulties. The City argues that commercial drivers licenses are a requirement of the job and inherent to the job descriptions. However, the City acknowledges reimbursing license expenses for water and wastewater employees when such licenses are not required. Evidence disclosed that reimbursement for CDL's are frequently granted employees in other communities.

The City maintains that it has a financial crisis, largely due to an EPA order to upgrade its sewer facilities. The union argues that the City has the means to increase its funding through an additional .5% income tax. The fact finder notes that the City has at times barely made payroll, and is operating without an administrator. A recent increase in sewer rates will alleviate some of the problems. It is apparent that City employees have already shared, to some degree, the burden of these financial problems and will continue to do so with the \$.25 per year increase agreed to in the tentative agreement. The fully-paid medical insurance package (Article 17 below) must be considered in evaluating the wage rates.

Recommendation

The base pay should be increased for all employees at the rate of \$.25 per hour for each employee for each year of the contract effective December 23, 1997, with subsequent increases on December 23, 1998 and December 23, 1999. Effective December 23, 1997 the City should reimburse the cost of commercial drivers licenses and renewals for those employees needing such licenses for the performance of their duties, as well as the water and wastewater license costs of

its employees. The water, waste water, and CDL employees should receive no further wage enhancement by virtue of their licenses.

The pay for the position vacated by Sandra Berry is not a part of this recommendation and it is recommended that it be negotiated among the parties should the City decide to fill that position.

Finding of Fact - Article 17. Insurance

The union wishes to modify Section 2 to increase the contribution to the AFSCME Care Plan to \$42 per month per employee. This is agreed to by the City.

The City proposes to reduce the fully paid medical benefits now offered, to one which pays 90% benefits the first year, 85% the second year and 80% the third year of the contract, with payment of \$500 per year to those opting out of the program.

The City has maintained a fully paid policy for many years. The City says that rates are going up. However, it is not clear from the evidence how much the City would save by such a change. The City argues that the County maintains a fully paid medical insurance policy for some of its employees, but other local municipalities do not. The City's financial condition does not justify a retreat in benefits in this area, given that the employees share that burden, to some degree, in their wages.

Recommendation

The insurance provision of the current contract should be continued, but modified to require the City to pay \$42 per month per employee to the AFSCME Care Plan.

Finding of Fact - Article 18. Miscellaneous

The union proposes that a provision be added to have the City pay full tuition for

Recommendation

The City's proposal to delete the uniform allowance should be rejected. However Article 20 Sections 1 and 2 should be amended to clearly apply to employees who are required to work outside (see language of tentative agreement).

Finding of Fact - Article 24. Snow Removal

The union proposes that City employees be paid for days in which a Level 3 snow emergency (no one allowed on streets) prevents them from working. The City does not believe that such occurs with enough frequency to justify a contract provision. The union said that once during the previous contract some employees went in and others stayed at home, resulting in some being paid and others not. Fairness would dictate, in these rare instances, that employees not be pressured by financial consideration to risk their safety. The financial effect on the City should be minimal.

Recommendation

The union proposal attached hereto as Exhibit 5 should be adopted.

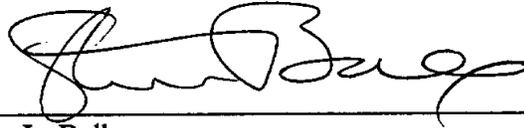
Respectfully submitted,



Steven L. Ball, Fact Finder
December 23, 1997

CERTIFICATE OF MAILING

I hereby certify that a copy of the above report was mailed (overnight mail) to Tamara Carsey (Union) and Mayor Danison (Employer), the 23rd day of December, 1997 and on the same date the original of said report was mailed by regular mail to the State Employee Relations Board.

A handwritten signature in black ink, appearing to read "Steven L. Ball", written over a horizontal line.

Steven L. Ball

Union P14
12/8/97

Package Proposal

change Art. 20 lang. to city proposal

Current contract on the following Articles:

- Art. 2 - Dues Check-off & Union Security
- Art. 8 - Layoff & Recall
- Art. 9 - Hours of Work & Overtime
- Art. 11 - Leaves of Absence
- Art. 14 - Holidays
- Art. 15 - Vacation
- Art. 18 - Misc. Provisions
- Art. 19 - Bereavement Leave
- Art. 24 - Snow Removal

I want to draft Art 12 language

Health Safety - Art. 12 - as proposed by Union on 10/24/97

Wages - Art. 16 -

50¢, 50¢, 50¢ 25¢, 25¢, 25¢

if the position vacated by Sandra Berry is filled the City shall meet with the Union to bargain over the hourly wage rate. ~~at pay~~

Longevity - current contract language

~~strike → EDE holder pay for license renewal, \$10¢ per hour license pay~~

No additional pay for water & wastewater licenses.

Insurance - Art. 17 - as proposed by Union on 10/24/97

I want to draft lang. for Art. 17
Contract clean up which includes Union's proposal of 10/24/97 on the following articles:

- 1 - Recognition
- 6 - Seniority

Include Memorandum of Understandings on Art. 11 - Sick Leave Buy Back & Art. 15 - Vacation

YM
12-9-97

with

Current to language on the following

Preamble

Art. 3

Art. 4

Art. 5

Art. 7

Art. 10

Art. 13

Art. 20

Art. 21

Art. 22

Art. 23

Art. 25

Art. ~~24~~²⁶ - 3 yr. agreement

Selma Harrison
Mont of Woodbridge

Yehi Moore

Tamara D. Cassey

12/9/97

Art. 20 - Uniforms

- applies only to employees who
work outside.

Art. 16 - Wages

25¢, 25¢, 25¢

IF the position vacated by Sandra Berry
is filled the City shall meet with the
Union to bargain over the hourly
wage rate.

Helma Dawson

Tamara D. Carney

Mark F. Howdshell

~~[Signature]~~

Kathryn Sanborn

12-9-97

Jeri Mora

ARTICLE 17 - INSURANCE

AFSCME Care Plan increased to \$42.00 monthly per employee.

FOR THE EMPLOYER:

FOR THE UNION:

Maury J. Howdshell

Tamara D. Carney

Delmar Dawson

Jerry Ripas

Kathy Dawson

12-9-97

Teri Mone

Date

Add: City may substitute another provider for the coverage under this section so long as the substitute coverage is equal to or greater than the AFSCME Care Plan. TC 12/9/97

ARTICLE 12 - HEALTH & SAFETY

Add to Section 4:

The City shall pay the cost of hepatitis b, TB and tetanus vaccinations to employees who work near raw sewage. ~~The City shall also pay to have employees' blood tested for controlled diseases annually at each employee's option.~~

TC 12/9/97

FOR THE EMPLOYER:

FOR THE UNION:

Delmar Danison

Tamara D. Cassey

Mark J. Handphill

Ray Richard

Ruby Danison

Jeri Moore

12-9-97
Date

Add: The City shall also pay to have the same employees tested for diseases to which they reasonably may have been exposed on an annual basis.

The City shall select the service provider for the benefits under this section

TC 12/9/97

Article 1 - Recognition
UNION'S POSITION:

The Union has proposed that Article 1, Recognition be changed to reflect the most recent amendment of certification (SERB Case No. 97-REP-04-0082) as follows:

SECTION 2. The bargaining unit for purposes of this Agreement shall be all service and maintenance employees of the City of New Lexington, Ohio, including laborers, water/sewer plant operators (Grade 1, Grade 2, Grade 3, and Trainee), equipment operators/maintenance men, and meter readers/installers **and all clerical and administrative employees** and excluding all supervisors, police officers, firefighters, administrators, and administrative personnel.

SECTION 3.

Included: All clerical and administrative employees, including Administrative Assistant to the City Administrator, Tax Clerk, Utilities Administrator, Mayor's Court Clerk/~~Payroll Clerk~~, and Assistant Finance Director/Assistant Water and Sewer Clerk/~~Payroll Clerk~~; **and all service and maintenance employees, including Laborers, Water/Sewer Plant Operators (Grade 1,2,3 and Trainee), Equipment Operators/Maintenance Men, and Meter Readers/Installers.**

Excluded: All management level employees, professional employees, guards and supervisors as defined in the Act, and all seasonal and casual employees as defined by the State Employment Relations Board, including the Mayor, City Administrator and Finance Director.

ARTICLE 2 - DUES CHECK-OFF AND UNION SECURITY

Current Contract Language and add:

SECTION 2.6. PEOPLE Check-off: The Employer will deduct voluntary contributions to the American Federation of State, County and Municipal Employees International Union's Public Employees Organized to Promote Legislative Equality (PEOPLE) Committee from the pay of an employee upon receipt from the Union of an individual written authorization card voluntarily executed by the employee.

The contribution amount will be certified to the Employer by the Union. Monies deducted shall be remitted to the Union within five (5) to fifteen (15) days of the date they are deducted. Payment shall be made to the Treasurer of PEOPLE and transmitted to AFSCME, AFL-CIO, PO Box 65334, Washington, D.C., 20035. The payment will be accompanied by an alphabetical list of the names of those employees for whom a deduction was made and the amount of the deduction. This list must be separate from the list of employees who had union dues deducted and the list of employees who had fair share fees deducted.

An employee shall have the right to revoke such authorization by giving written notice to the Employer and the Union at any time.

The Employer's obligation to make deductions shall terminate automatically upon receipt of revocation of authorization or upon termination of employment or transfer to a job classification outside the bargaining unit.

All PEOPLE contributions shall be made as a deduction separate from the dues and fair share fee deductions.

FOR THE EMPLOYER:

FOR THE UNION:

Date

ARTICLE 14 - HOLIDAYS

SECTION 14.1. Add: 2 Kelly days (clerical employees)

Add: SECTION 14.6. Employees working 4 ten hour days shall be paid ten (10) hours holiday pay.

FOR THE EMPLOYER:

FOR THE UNION:

Date

ARTICLE 24 - SNOW REMOVAL

Current Contract Language and add:

SECTION 3. When a level 3 snow emergency has been declared for the City of New Lexington, employees who are not considered emergency personnel shall receive pay for hours they normally would have worked which shall not be deducted from sick, personal or vacation leave accrual.

FOR THE EMPLOYER:

FOR THE UNION:

Date