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**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
March 27, 1998**

In the Matter of:)	
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)	
)	
The City of Dover)	
)	
and)	97-MED-12-1304
)	
AFSCME)	
Ohio Council 8, Local 2550)	
)	

APPEARANCES

For the Union:

Fred Hartsel, Staff Rep Ohio Council 8
 Donley Hostutler, Bargaining Unit
 Richard Kecker, Bargaining Unit
 Glenn Porter, Bargaining Unit
 Larry Pruni, Bargaining Unit
 Carol Skodney, Bargaining Unit
 Paul Tiratto, Bargaining Unit
 Paul Truchly, Bargaining Unit
 Gregory Weigand, President Local 2550

For the City:

Richard Homrighausen, Mayor of Dover
 David Douglas, Service Director City of Dover
 Mary Fox, Assistant Auditor, City of Dover

Fact Finder: Dennis M. Byrne

Background

The Fact Finding process involves the City of Dover and the utility billing clerks represented by AFSCME Local 2550. The parties engaged in numerous negotiating sessions and were able to agree on all issues except the payment of an equity raise for the billing clerks. Because of the circumstances surrounding the issue, mediation was not attempted (see the Introduction to the Report). The Fact Finding was conducted on March 23, 1998, at the Dover City Building. The Hearing commenced at 10:00 A.M. and was adjourned at 11:30 A.M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making his recommendations. The criteria are set forth in Rule 4117-9-05.

The criteria are:

- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 final offer settlement through voluntary collective bargaining, mediation, fact-finding or other impasse resolution procedures in the public service or private employment.

The Report is attached and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties

require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

INTRODUCTION:

The issue dividing the parties has been an area of contention for a number of negotiating cycles. In the last negotiation cycle the parties agreed to a contract, but the Utility Billing Clerks believing that the agreement did not adequately address their needs filed a law suit against both the City and AFSCME, Ohio Council 8. In an out of court settlement, the Union was dropped from the suit. At the present time, the City and the Billing Clerks are still parties to the suit.

In the meantime, the parties have negotiated a successor agreement and reached agreement on all issues except the questions surrounding an equity adjustment for the utility clerks. The final issue(s) to be decided is 1) whether the billing clerks will be paid an equity adjustment, and 2) the amount of an adjustment if it is determined that the clerks are underpaid. Of course, these are the issues at the bar.

As a result of the law suit, the parties find themselves engaged in parallel processes i.e., negotiations and a court action, over the same issue. The fact finding hearing was scheduled because the dispute resolution procedures of ORC 4117 have been invoked due to the fact that the parties cannot come to agreement on a new contract. However, the law suit continues to cast a shadow

over the relationship. The Fact Finder is aware of the situation, but the Fact Finder's mandate is to attempt to help the parties craft an agreement that meets their needs under the aegis of ORC 4117. Therefore, the Fact Finder will issue a report based on the evidence presented at the hearing with no consideration of the legal proceedings.

Issue: Article XV Wages

Union Position: The Union is demanding an increase of \$.75 per hour per year of the contract as an equity adjustment for the Utility Billing Clerks.

City Position: The City has rejected the Union's demand and is offering no adjustment to the Clerks.

Discussion: There are two separate questions that need to be addressed.

First, does the evidence show that the utility billing clerks are underpaid? If that question is answered affirmatively, then the size of the equity increase must be determined. Turning to the first question: the parties base their positions on the evidence provided by comparables. The billing clerks base their argument on internal comparability. The clerks pointed out that the City pays them less than any other full time city employee (i.e., job title). The clerks argued that their job requires independent judgment and initiative. In addition, the clerks are often the only representative of the City who meets and solves problems for the citizens of Dover. The clerks truly feel that their job has responsibilities beyond the ordinary, and they cannot understand why their job is the lowest paying full time job in the City.

The City does recognize that the clerks are the lowest paid full time employees, but argues that someone must be the lowest paid, and in this case it happens to be the clerks. The City also points out that if the clerks receive an equity increase, then some other job title will (may) become the lowest paid. The City contends that nothing can be read into the fact that the clerks are the lowest paid City employees, i.e., some job title must be the lowest paid.

The City countered the Union's presentation with evidence based on external comparables. The City's position is based on wage information from jurisdictions that the City believes are comparable to Dover, including Galion, St. Clairsville, Jackson, and New Philadelphia. The City stressed the information from New Philadelphia because the two cities are contiguous. In each case, the City argued that the evidence did not support a finding that the clerks are underpaid. According to the City, the evidence from all these jurisdictions supports a finding that the Dover utility clerks are paid a wage similar to the wages paid in other jurisdictions for the duties performed by utility clerks.

The Union countered this argument with evidence intended to show that the job actually performed by the Dover utility clerks is different than the job performed in other cities. The major difference centers on the fact that Dover has its own utility plant. This necessitates increased record keeping and general office duties compared to most other jurisdictions. For example, the Union argued that the New Philadelphia clerks do not have the same workload as the Dover clerks, because of the extra effort necessitated by the fact that the City has its own utility system. The Union believes that this means the New

Philadelphia clerks do not fully meet the definition of comparability set forth in ORC 4117. Therefore, according to the Union, the evidence shows that the Dover clerks have different and somewhat greater workloads than most other utility clerks. Moreover, the Union contended this means that the evidence supports a finding that the Dover clerks deserve an equity increase.

The Fact Finder believes that the Union just proved its point. When workloads are considered it appears that the utility billing clerks are marginally underpaid compared to clerks in other jurisdictions. The evidence from the City's external comparables cannot illustrate work loads. The data only show pay rates for the utility clerk job title, but when consideration is given to the work actually performed by the clerks, the evidence as a whole does indicate that the Dover utility clerks are somewhat underpaid compared to other clerks in the area, although the difference is small. However, the clerks are underpaid considering the City's internal wage structure. In fact, it is this latter finding that convinces the Fact Finder that some equity adjustment is needed. Dover pays its employees well, and the clerks are underpaid vis-a -vis other City employees.

The second question concerns the size of the increase. The clerks are demanding \$.75 an hour in each year of the prospective contract. The clerks demand this raise because they believe that they should be paid as much as the lowest paid full-time employees within the City. This is understandable. However, the law requires that the Neutral consider, "other employees performing the same or similar duties." In this instance a \$.75 per hour increase for each year of the contract in addition to the increase negotiated by the Union

for all its members would destroy the concept of comparability. The Union's demand would translate to an hourly rate to \$14.59 in 2000. This is much higher than the hourly rate for any other utility clerk in the area according to the information provided by both the Union and the City. In addition, a hourly wage in excess of \$14.50 is not reasonable considering both job title and the amount of work actually performed by the utility clerks.

The Dover utility clerks are considering only internal comparability in formulating their demand. Logic dictates that the Neutral also examine external comparability. In other words there must be some relationship to the wage paid in Dover to the wages paid in other jurisdictions for the same job title, i.e., the overall labor market for utility clerks must be considered. Indeed, if the Dover clerks had exactly the same workload as other clerks, the Neutral would be forced to conclude that they are not, or only marginally, underpaid considering others that, "perform the same or similar work." Therefore, the Neutral cannot recommend a \$.75 an hour increase because it would place the Dover clerks far above any other person performing the tasks subsumed under the utility clerk job title on any comparables list.

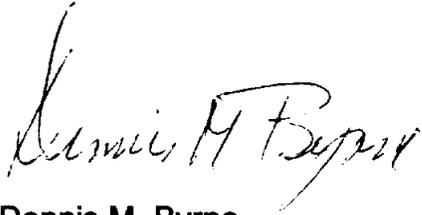
Regarding the size of the increase: there is some evidence of the magnitude of the increase in the bargaining history of the parties. In the prior round of negotiations, the City at one time offered the clerks a \$.21 per hour equity increase in the first two years of the expiring contract. The offer was withdrawn in the give and take of the parties in their negotiations to reach an agreement. It should be stressed that the offer was not withdrawn because it

was unreasonable. Rather, the parties simply desired to move in another direction with regard to wages.

Considering all of the evidence, the Fact Finder believes that an equity increase of \$.25 cents per hour per year is reasonable. This would raise the hourly wage for the clerks to \$13.08 in the last year of the contract. Multiplying \$13.08 x 2080 hours gives a yearly base wage in excess of \$27,000.00. The Fact Finder believes that the evidence presented by both parties implies an increase of this amount is reasonable. The Fact Finder is aware that a wage increase of this magnitude will place the clerks at the top of any externally comparable wage scale for utility clerks in the Dover area. It is also true, that the clerks will still be the lowest paid full time employees of Dover, but they will be adequately compensated for the job they perform. Again it must be stressed that the main reason for this recommendation is that the City compensates its employees well and the clerks should share in this pay system.

Finding of Fact: The evidence presented by the parties indicates that the Dover clerks perform some what more work than most other utility billing clerks. In addition, the data shows that the clerks are underpaid when compared to other City employees. These factors necessitate an equity increase. The Fact Finder believes that a \$.25/hour equity increase in each year of the prospective contract is reasonable given all of the information presented at the hearing. (It must be noted that this is an equity increase, the regular base wage increase that applies to all employees will also apply to the utility clerks.)

Suggested Language: The wage scales in article XV of the contract shall be amended to reflect the equity increase.

A handwritten signature in black ink, appearing to read "Dennis M. Byrne". The signature is written in a cursive style with a large initial 'D'.

Dennis M. Byrne
Professor of Economics