

STATE OF OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN:

CITY OF CLEVELAND

and

CITY, COUNTY AND WASTE PAPER DRIVERS,  
TEAMSTERS UNION LOCAL 244

CASE NO: 98-MED-02-0080

FACT FINDING REPORT OF  
THOMAS R. SKULINA

HEARING

After extensive mediation of more than two days, the fact-finding was conducted on May 5, May 6 and May 13, 1999.

The City was represented by attorneys Craig Brown, Esquire and Janette Louard, Esquire.

The Union was represented by its President, Jarrell B. Williams.

A transcript was made of this proceeding (676 Pages).

ISSUES

Thirty-two issues were presented to fact-finding.

BACKGROUND

Collective bargaining and mediation did resolve a number of issues. The resolved issues include the issue of wages, health care, personnel records, discipline, a side letter on competitive institutions, Family and Medical Leave Act, military leave, longevity, lay-offs, overtime, shift premium, and with respect to Addendum IV, two provisions regarding the dog wardens.

There remain, however, a number of unresolved issues.

Local 244 has seventeen job classifications. These consist of the following:

Concrete Mixer Driver  
Tanker Truck Driver  
Truck Driver (all classifications)  
Tow Truck Operator  
Airport Maintenance Man  
Tractor Driver  
Dog Warden  
Hostler  
Street Equipment Maintenance Specialist  
Street Equipment Maintenance Leadman (working)  
Street Carry All Driver  
Waste Collection Driver  
Ground Maintenance Driver I  
Ground Maintenance Driver II  
Traffic Controller  
Parking Enforcement Officer  
West Side Market

#### MATTERS CONSIDERED

Ohio law requires the fact-finder to consider the following in making a recommendation [O.R.C. Section 4117.14(G) (7) (a-b)].

- (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 of in private employment.

In addition to the extensive fact-finding hearing, both parties introduced written submissions, briefs and a number of exhibits that were all reviewed and considered.

There were some unresolved issues that pertained to all the bargaining unit members. There were also issues that pertained only to certain classifications of the membership. The different classifications of members are dealt with in Addendums to the Collective Bargaining Agreement (hereafter "CBA").

These include Addendum III Hostlers, IV Dog Warden, V Bridges and Docks, VI Parking Enforcement Officers, VII Parks, VIII Traffic Controllers, IX Waste Collection, X Airport, XI Department of Public Utilities and XII Streets.

As issues pertinent only to a particular category of employee was presented, each party brought representatives to either assist the advocates or to present evidence to this fact-finding.

All labor contracts with the City expired March 31, 1998.

Agreements have been reached with most of the unions. Police and Fire forces have obtained interest arbitration awards. The largest number of the City's 7400 union represented employees are members of AFSME (2300 members). AFSME has agreed to a contract. Other unions that have already entered into contracts include Operating Engineers Local 10, Laborers Local 1099, Local 39 (Lineman and Supervisors), Local 27 (Stage Hands), SEIU Local 47 (2 units), Local 639 (Sign Painters), Local 38 (Electrical Inspectors), Local 55 (Plumbing Inspectors) and The Longhoreman's Association (Bridge Operators).

#### PARITY

A labor relations principle relates to the concept of parity.

In instances where numerous unions are involved with one employer, this principle takes a greater relevance.

What union would want to be the first to agree to certain matters only to have its members' concessions or enhancements upstaged by the union that waited to be last or near last in the bargaining process?

The city in its early negotiations always has to factor in the complex issues of dealing with numerous unions.

Fact-finders and Arbitrators follow parity patterns once they are established.

Collective bargaining may or may not deviate from the pattern, but arbitration or fact-finding is not the road to breaking parity. Collective bargaining is not replaced by the sole determination of a neutral.

When an issue raised by either party appears to deviate from the pattern, then it is incumbent upon the party raising the issue to exhibit how significant differences in its unit's makeup justify the terms sought.

This fact-finder shall follow a parity principle which shall be considered for each of the numerous proposals submitted to fact-finding. Where some benefit is recommended that may stretch this principle, an explanation shall be made.

#### FINANCIAL CONDITION OF THE CITY

Evidence on the fiscal status of the City was introduced by the City through its Director of Finance. Further information about the City was given by an Executive Assistant to the Mayor.

The city has made progress since the time it was in default.

Its revenues are derived from a number of sources. The income tax accounts for over fifty percent of revenue. Money is shared with the state from state income taxes and sales tax. Property taxes also add to the revenue mix.

In good years, the revenue stream has gone up three percent. In bad years it may amount to one or two percent.

After a four million dollar budget, only fifty thousand dollars remained as a cushion.

The city has worked to avoid lay-offs as much as possible.

Wages account for eighty percent of the budget. Capital needs have been somewhat short changed.

Thirty-two percent of the population in Cleveland is over sixty. Of 21,000 infants born in 1997, sixty-four percent were below the poverty level.

Three quarters of all the poor people in the county reside in Cleveland. In four neighborhoods, seventy-five percent live below the poverty level.

The poor have moved from the east to the west side. Sixty percent of Ohio City residents are below the poverty level.

This distribution of poverty makes it more difficult and expensive to extend city services to these people.

Roads and bridges are in need of repair and not enough funds are available.

Public buildings are not up to ADA standards since the City doesn't have the \$7.7 million to fund the repairs.

Though one hundred parks have been renovated, forty-five have not been touched in ten years. A new play surface costs one-fourth of a million dollars.

Further evidence explored a myriad of services that the City provides and those it can't because it does not have the money.

The city has presented a fiscal picture that makes it clear that it just gets by with the budget it must live with.

I am satisfied that this is not a community that is short changing its work force to indulge itself in frivolous capital projects. The wage package which was accepted by the union, as well as the other unions with contracts, was within the parameters of expected propriety.

#### COMMON ISSUES

There is a basic CBA that applies to all the members of the bargaining unit.

There are also numerous issues that apply only to some members. For example, the Dog Wardens raised different issues than the Traffic Controllers. Each of these units have special sections attached to the CBA and styled "Addendum". These will be addressed after a finding is made for the common issues.

## ISSUE #1 - GRIEVANCE PROCEDURE

The union has proposed an expedited arbitration process. A considerable number of grievances have accumulated.

The proposed process would utilize three arbitrators instead of one. Time beyond Step 3 of the grievance procedure would be shortened.

Most unions adopted the same grievance procedure submitted by the city. Though expedited arbitration is utilized in other forums, this panel approach has not been used by the city. Such a change should be the result of collective bargaining. A time limit to test this approach could be worked out in a side letter.

To put such a clause in the three year CBA is a stretch for the role of a fact-finder in view of the majority of unions that use the same grievance procedure as that proposed by the city.

The more uniform the grievance procedure, the easier it is for both management and labor to become accustomed to the procedure.

It is for these reasons that I recommend the following:

### FINDING: ISSUE #1 - GRIEVANCE PROCEDURE

It is mutually agreed that the prompt adjustment of grievances is desirable in the interest of sound relations between the employees and the city. The prompt and fair disposition of grievances involves important and equal obligations and responsibilities, both joint and independent, on the part of the representatives of each party to protect and preserve the Grievance Procedure as an orderly means of resolving grievances. It is the intent of the city and the union to share information pertaining to grievances at all steps of the Grievance Procedure.

A grievance is defined as a dispute or differences between the City and employee(s) or the city and the union concerning the interpretation and/or application of and/or compliance with any provision(s) of this Contract, including any and all disciplinary actions. A Group Grievance is a grievance filed by a group of employees relating to a single common issue or event covered by this Contract. A Policy Grievance is a grievance filed by the union relating to a single common issue or event covered by this Contract. The grievance form shall

set forth the complete details of the grievance, i.e., the facts upon which it is based, the paragraph(s) allegedly being violated, the approximate time of occurrence and the relief or remedy requested. It is understood that a written grievance may be amended by the Union at any time during the Grievance Procedure. However, all amendments must be presented prior to the start of the Step Three (3) meeting at which the amended grievance is to be heard, except in the case of grievances which begin at Step 3, in which case all amendments must be presented not later than thirty (3) calendar days prior to arbitration.

It is important that the employee's grievance(s) regarding unjust or discriminatory discharges, or wage rates/Step placement by handled promptly. Therefore, all such grievances shall be reviewed through the Grievance Procedure beginning at Step Three (3) within ten (10) working days as in Step One (1).

**Step 1.** When a grievance arises, the following procedure shall be followed: An employee who believes he has a grievance has a right to notify his union representative of the situation and to discuss the alleged violation. This discussion shall take place with regard for the City's operational needs, but as soon as is reasonably possible. The grievance shall be reduced to writing and presented to the Commissioner or Appointing Authority or his designee within ten (10) working days of the event(s) giving rise to said grievance. The Commissioner or Appointing Authority or his designee shall meet with the Steward and Union Officer within five (5) working days from the date of receipt of the grievance in an effort to resolve the grievance. Within ten (10) working days after this meeting, the Commissioner or Appointing Authority or his designee shall give a written answer to the Steward and Union Officer. Each grievance shall be answered separately. The answer shall set forth in detail the settlement reached between the parties and shall include the grievance number, grievant's name, and the date of the grievance hearing. Agreement on this settlement shall be noted by both parties, in writing, on the grievance answer. In the event the grievance is not resolved, the answer shall set forth in detail the reason or reasons for the denial of the grievance.

**Step 2.** If the grievance is not satisfactory settled at Step One (1), it shall be presented in writing to the employee's Director or his designee within ten (10) working days of the receipt of the Step One (1) answer. Within five (5) working days thereafter, the Director or his designee shall meet with the Local Union Officer. Within ten (10) working days after the Step Two (2) meeting, the Director or his designee shall give a written answer, as defined in Step One (1), to the Local Union Officer.

**Step 3.** If the grievance is not satisfactorily settled at Step Two (2), it shall be presented in writing to the City's Labor Relations Representative, with a copy to the affected Director or his designee, within ten (10) working days after receipt of the Step Two (2) answer. The City's Labor Relations Representative and the Union's Representative will mutually agree on a date for a meeting for the purpose of considering grievances. A complete agenda for all grievances appealed in writing to Step Three (3) will be provided by the Union prior to each meeting. Within thirty (30) calendar days of the Step Three (3) meeting, the City's Labor Relations Representative shall give a written answer, as defined in Step One (1), to the Union's Representative.

**Step 4.** If the grievance is not satisfactorily settled at Step Three (3), the union may, within thirty (30) calendar days in the case of grievances appealing an employee discharge, and within thirty (30) working days in the case of all other grievances, submit the matter to final and binding arbitration. The union shall notify the City of its intent to arbitrate the grievance. Within ten (10) calendar days thereafter, the parties shall meet and attempt to mutually agree upon an arbitrator. If no agreement can be reached, the union shall within ten (10) calendar days after the meeting, notify the Federal Mediation and Conciliation Service (FMCS) and the city at the same time of its intent to arbitrate the grievance. The fees and expenses of the arbitrator shall be borne equally by the city and union. Furthermore, the aggrieved employee, his union representative, and any necessary witness(es) shall not lose any regular straight-time pay for time off the job while attending an arbitration proceeding. The union will provide the city with twenty-four (24) hours' advance notice of employees required to testify.

The parties may, by mutual agreement, choose to have a grievance involving suspension or discharge arbitrated on an expedited basis. The expedited arbitration will be conducted pursuant to the rules of the American Arbitration Association, and the fees and expenses of such proceeding including those of the Arbitrator, shall be borne equally by the City and the Union.

In the event a grievance goes to arbitration, the arbitrator shall have jurisdiction only over disputes arising out of grievances as the interpretation and/or application and/or compliance with the provisions of this Contract, including all disciplinary action. In reaching his decision, the arbitrator shall have no authority (1) to add or to subtract from or modify in any way of the provisions of this

Contract; (2) to pass upon issues governed by law; or (3) to make an award in conflict with law. The arbitrator shall issue a decision within thirty (30) days after submission of the case to him.

In instances where the city objected to arbitration and the union chose to proceed, the first (1st) question to be placed before the arbitrator will be that of arbitrability.

If the arbitrator determines that the grievance is within the purview of arbitrability, the grievance will be heard on its merits before the same arbitrator.

All decisions of arbitrators and all pre-arbitration grievance settlements reached by the union and the city shall be final, conclusive and binding upon the city, the union and the employees. Provided, that a grievance may be withdrawn by the union at any time during the Grievance Procedure and the withdrawal of any grievance shall not be prejudicial to the positions taken by the parties as they relate to that or any other grievance. For purpose of this section, timeliness is counted as working days from the date of the incident or the date expressed on the face of either the answer or the appeal notice, as applicable. Extensions of time limits shall be by mutual agreement and must be verified in writing and signed by both parties. The date of occurrence of the event causing time to run is not counted in the time limit. If the last date of a period is not a regular business day, the time period runs through the end of the next regular scheduled business day.

#### ISSUE #2 - DRUG/ALCOHOL TESTING

The police have become subject to the drug/alcohol testing program of the City.

It seeks to include as "safety sensitive" the positions of Traffic Controller and Parking Enforcement Officers.

The city's position, in view of the police situation, is sustainable.

**FINDING: ISSUE #2 - DRUG/ALCOHOL TESTING**

All employees who are required to be randomly tested under law (e.g. Department of Transportation regulations regarding employees required to have a Commercial Driver's License who drive vehicles in excess of 26,000 pounds), and all employees in Safety Sensitive Positions shall be subject to random drug/alcohol testing. Such testing shall be conducted in accordance with the DOT procedures. Further, when there is a reasonable suspicion to believe that an individual employee is using illegal drugs or alcohol at work or is under the influence of drugs or alcohol at work, such employee will be directed to report to a City-designated physician or medical clinic, on city time and at city expense, for a fitness-for-duty examination. Both random examinations and reasonable suspicion examinations are conducted for the purpose of determining the presence of illegal drugs or alcohol in the employee tested. An employee who is directed to submit to such examinations shall report to a City-designated physician or medical clinic, on city time and at city expense. The city's Manager of Labor Relations, or his designee, shall approve all drug/alcohol testing. This testing will include possible urine, blood, or breathalset exams as determined by the appropriate medical personnel. An employee who refuses to submit to drug/alcohol testing under the provisions herein shall immediately be charged with insubordination and will be suspended pending discharge. An employee who fails a drug or alcohol test for the second time during his/her employment with the city shall be discharged immediately by the city.

An employee may be referred to fitness-for-duty screening if at least one (1) supervisor has a reasonable suspicion that the employee is then under the influence of alcohol or a controlled chemical substance. The circumstances supporting an allegation warranting reasonable suspicion testing shall be reduced to writing, signed by the supervisor, and copies provided to the employee and union prior to testing. The demand for a urine, blood or breath specimen should be based only upon specific/objective facts and reasonable inferences drawn from those facts in light of experience that the employee is then under the influence of drugs or alcohol. In addition, employees may be referred for mandatory urine, blood, or breath, for drug and/or alcohol screening under the following circumstances:

- (a) A disciplinary probation for employees who have violated the City's drug and alcohol rules; and

- (b) For employees returning from leaves of absence if they have given management a reason to suspect possible illegal drugs and/or alcohol abuse. Possible reasons to suspect substance abuse include, but are not limited to, a history of excessive absenteeism not related to a specific illness, documented evidence of deteriorating job performance or of aberrant behavior in the six months immediately preceding the leave of absence or documented involvement with drugs off the job.

An employee shall be entitled to have a union representative present before testing is administered.

As concerns urine samples for drug testing, employees to be tested will undergo an initial screening (EMIT) test. For any positive results, a confirmatory test employing the gas chromatography/mass spectrometry (GC/MS) test will be used. The city will ensure that there is a continuous chain of custody of any sample taken from an employee. Specimen collection will occur in a medical setting. The testing procedures should not demean, embarrass or cause physical discomfort to employees. Altering or switching a specimen sample for a drug/alcohol test, or otherwise refusing to follow the established testing procedure and/or guidelines, shall be grounds for immediate suspension pending discharge.

The results of any drug or alcohol screening test will be kept strictly confidential. An employee who tests positive for drugs and/or alcohol will have the opportunity to review the test results and, if desired, a reasonable opportunity to rebut the results. Copies of test results shall be given to the city and to the individual tested. Where urine, blood or other samples have been taken, the two samples will be preserved for a reasonable period of time and tested employees will have the opportunity to take one of these samples to a reputable physician or laboratory of their choosing for retesting.

Employees who may be drug or alcohol dependent are encouraged to voluntarily seek professional assistance through a reputable treatment program. The city's EAP program can provide counseling and referral. All records of an employee seeking medical rehabilitation for a drug or alcohol problem, either through EAP or otherwise, will be kept strictly confidential. Voluntary assistance should be sought before dependence affects job performance so as to endanger fellow employees, the public or otherwise adversely impact on the employee's ability to perform his or her job duties.

Participating in the EAP program does not supplant the normal discipline and grievance procedure. An employee subjected to disciplinary charges which include substance abuse on the job will be given access to the drug or alcohol screening results, the ability to privately test the blood, urine or other samples at an independent lab and the opportunity to rebut any allegation of chemical abuse. Any charging letter issued to an employee which includes allegations of substance abuse on the job shall list the basis upon which it was determined that there was reasonable cause to believe the employee was using drugs or was under the influence of drugs or alcohol.

Any employee found to have positive screens for drugs or alcohol must be given medical clearance by a qualified physician acceptable to the City before returning to work.

An employee shall be deemed to have failed an alcohol test if:

- (1) The person has concentration of ten-hundredths of one percent or more by weight of alcohol in his blood;
- (2) The person has a concentration of ten-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his breath;
- (3) The person has a concentration of fourteen-hundredths of one gram or more by weight of alcohol or one hundred milliliters of his urine.

The city is not responsible for any legal obligations and costs for claims based on the union's duty of fair representation.

The union shall be indemnified and held harmless by the city for any violation of an employee's constitutional, common law, or statutory rights.

Safety sensitive positions include the following:

Traffic Controllers

Parking Enforcement Officers

### ISSUE #3 - PARKING TICKETS

After review of both side's arguments, it appears that unless a valid city reason is shown for illegal parking, then no employee parking a city vehicle should have an immunity from being obligated to pay for illegal parking anymore than any other citizen.

#### FINDING: ISSUE #3 - PARKING TICKETS

Employees who fail to pay parking tickets/fines received on city vehicles after the ratification of this collective bargaining agreement will authorize the city to deduct the amount of the fines from their pay once the administrative process, if applicable, has been exhausted.

### ISSUE #4 - SIDE LETTER REGARDING DISCIPLINARY POLICY

A single DUI conviction within two (2) years shall not warrant discharge. Two convictions within that period is something else. Once is one time too many. Two times create a liability for the city that could be extremely expensive should no action be taken to safeguard the public and fellow employees from a known drunken driver.

#### FINDING: ISSUE #4 - SIDE LETTER REGARDING DISCIPLINARY POLICY

The union agrees that effective upon ratification of the Collective Bargaining Agreement, the city has a disciplinary policy allowing it to discharge employees for serious misconduct included, but not limited to:

- (a) Theft of city property;
- (b) Conviction of an offense involving the sale of drugs;
- (c) For employees regularly scheduled to drive a city vehicle, two DUI convictions within a two year period.

**ISSUE #5 - ARTICLE XVI - ASSIGNMENT OF WORK -  
TEMPORARY TRANSFER**

When a driver loses his or her commercial license, then obviously that person can not drive the vehicle he or she was hired to drive.

A temporary transfer has been offered. The union requests that during the period of transfer, the employee receive the same rate of pay even though the other position pays less.

The city contends its accommodation is fair and that the position should set the wage rate.

Behind all this is the chance that a non-operating position is available.

This accommodation is fair to the employee. It would seem, however, also fair that if more than one non operation of equipment job is available, all be it at a lower rate, that the suspended driver be assigned to the highest rate job available.

**FINDING: ISSUE #5 - ARTICLE XVI - ASSIGNMENT OF WORK -  
TEMPORARY TRANSFER**

When ever an employee loses his/her commercial driver's license he/she shall, if qualified, be placed in another position that does not require operation of equipment and shall be paid at the rate of the position. If more than one qualified position is available, the highest paying position shall be assigned to the driver.

If a valid State of Ohio commercial driver's license is a requirement for the position and there is a reassignment to alternative duties that do not require a commercial driver's license, that non-driving position shall not exceed ninety calendar days. Failure to comply with this requirement could result in employee being discharged.

**ISSUE #6 - CLOTHING ALLOWANCE**

Clothing Allowance were discussed for Hostlers (Addendum 111), Dog Wardens (Addendum IV), Airport Maintenance (Addendum X) and Motor Vehicle Maintenance (Addendum XIII).

The amounts for uniforms and maintenance of same were not in dispute. The city wanted the option to furnish uniforms in lieu of cash.

The union provided testimony that the city has not always furnished uniforms in the period it had committed itself.

In the past, cash was paid, but the city is concerned that the cash will not find its way into uniforms.

The city, however, can require uniforms on the job and the employee must appear on the job in uniform.

In the CBA, because of the testimony that uniforms have not always reached the employees, I feel that a return to cash is warranted.

In the next go around of negotiations, this, of course, may be revisited.

**FINDING: ISSUE #6 - CLOTHING ALLOWANCE**

6A. Addendum III Hostlers

i. Effective March 1, 1999, the city shall pay all Truck Drivers and Hostlers a maintenance allowance of \$300.00 to be paid March 1st of each year. Employees must use this money to purchase clothing as specified by management.

6B. Addendum IV Dog Warden

i. Effective March 1, 1999, the city shall pay a uniform allowance in the amount of \$250.00 and a uniform maintenance allowance of \$350.00 to be paid March 1st of each year. Employees must use this money to purchase clothing as specified by management.

6C. Addendum X Airport

i. Effective March 1, 1999, the city shall pay a uniform allowance in the amount of \$300.00 to be paid March 1st of each year. Employees must use this money to purchase clothing as specified by management.

6D. Addendum XIII Motor Vehicle Maintenance

i. Effective March 1, 1999, the city shall pay a uniform allowance in the amount of \$310.00 and a uniform maintenance allowance of \$200.00 to be paid March 1st of each year. Employees must use this money to purchase clothing as specified by management.

**ISSUE #7 - ARTICLE XXV - PAY DAY**

Evidence indicated that a commitment by management to correct check errors in excess of \$50.00 within three (3) working days was not reasonable. The city currently is in the process of installing new computer programs and therefore can not commit to this requested time frame of three (3) days.

**FINDING: ISSUE #7 - ARTICLE XXV - PAY DAY**

Maintain current contract language and practice.

**ISSUE #8 - REQUESTS FOR INCREASES IN PLUS ADJUSTMENTS AND  
INEQUITY ADJUSTMENTS IN GENERAL**

The history of Cleveland clearly has established a pattern of same wage discrepancies in different divisions for people performing essentially the same job.

Non economic differences such as grievance procedures are becoming standard, due to arbitration, fact-finding and collective bargaining; not necessarily in that order.

Collective bargaining is the real vehicle to set in motion any equalization of pay rates for claimed identical work done in different divisions.

To expect a fact-finder at the tail end of negotiations to recommend a standardized wage rate for the city for equal job performance any where in the city would require a stretch of the fact-finder function.

The monetary cost of this process was not brought out in the fact-finding hearing and the cost to the city for these requests would require a guess by the fact-finder.

It is not this fact-finder's practice to recommend potentially costly benefits without knowing their costs.

In any event, it was clear from the evidence and the history of the negotiations in this case that the many issues involving economic benefit to the membership were made as part of the bargaining process and with the expectation that any other economic enhancements should not be part of the CBA.

There are processes in place within the city to review issues raised in the equalization request.

Collective bargaining is still around and these issues may always be part and process of the next round of talks.

**FINDING: ISSUE #8 - REQUESTS FOR INCREASE IN PLUS ADJUSTMENTS AND INEQUITY ADJUSTMENTS IN GENERAL**

Maintain current contract language and practices for all plus adjustments (Addendums V, VI, VII, IX, X).

Maintain current language and practices for all inequity adjustments Addendum VI, VII, VIII, IX, X, XI, XII, XIV.

**ISSUE #9 - ADDENDUM VII PARKS WORKING CONDITIONS**

The union requests language that employees will be assigned alternate duties when the temperature drops below forty degrees (40 ). Tractor operators shall not be required to operate tractors in the rain.

The city responds with the fact that the weather in Cleveland is such that it may rain in one part of Cleveland and not the other. Temperature is relative since with sun and no wind the temperature is more tolerable than on days of the same temperature with wind and an overcast sky.

The city manager testified that he does not send people out in a down pour nor in extremely cold conditions.

Some discretion comes with management rights. In view of the unusual weather patterns of Cleveland, a rigid standard would create serious operating problems. The grievance procedure is available if the city abuses its management rights.

**FINDING: ISSUE #9 - ADDENDUM VII PARKS WORKING CONDITIONS**

Maintain current contract language and practices.

**ISSUE #10 - ADDENDUM VIII - TRAFFIC CONTROLLERS HAZARDOUS DUTY PAY**

The union presented a persuasive case that established that numerous Traffic Controllers were injured on the job while directing traffic. Thirteen Traffic Controllers have been struck by vehicles.

Hazardous duty pay does exist for police and fire employees. The Traffic Controllers request that they too be afforded this benefit.

The city argued that many jobs expose workers to hazards. That is the reason for Workers' Compensation and sick time in the event of an accident.

Traffic Controllers stand out in traffic and are dressed like police officers. Hostile drivers have purposely run down these individuals who look like police.

Police also may direct traffic but they are armed and trained to deal with hostile or negligent citizens.

Traffic control and police work overlap at the intersections of the city's busy streets, as well as the heavy flow of vehicles at the Airport.

If a police officer directs traffic and gets hit by a car, he/she would probably qualify for this pay.

This is a new benefit that is being sought. My reluctance to add any measures that would increase the financial burden of the city has been stated earlier.

I am not going to recommend, as long a period as the union requested, and shall recommend the right of subrogation in the event of civil recovery from an errant driver. I am also making it clear that this only applies to vehicle accidents and no others. The potential economic cost to the city is minimal. Errant drivers, for the most part, shall bear this cost.

The concern that this sets a precedent for other employees should be allayed. The Traffic Controllers stand out in heavily congested traffic, look like police and are doing a job that police may perform.

Directing traffic is not the same thing as putting tickets on cars or working in the city streets where there is some vehicular traffic. Traffic Controllers are involved with hearing traffic at busy intersections or at the airport.

**FINDING: ISSUE #10 - ADDENDUM VIII - TRAFFIC CONTROLLERS  
HAZARDOUS DUTY PAY**

1. Effective August 1, 1999, all Traffic Controllers that are struck by a vehicle while performing the duty of Traffic Controller, where an injury is sustained, shall be provided with hazardous duty pay for a period of six (6) weeks.

The injured person shall provide a medical report verifying the need for such time as claimed for this pay.

In the event that a civil suit is brought against the driver of such vehicle, the city shall be subrogated to any recovery to the extent that it has paid hazardous duty pay.

**ISSUE #11 - ADDENDUM X AIRPORT PREVAILING WAGES**

The union seeks to list twenty-seven (27) types of equipment under the CBA clause regarding prevailing wages.

The present twelve (12) items of equipment in the CBA are more generic and include some of the twenty-seven (27) items of equipment listed by the union.

For example, there is an item called "Front End Loader". In the proposal, two caterpillars loaders are listed. So too there are two back hoes in the proposal, but the present CBA covers this with a generic "backhoe" reference.

The city objects to listing every conceivable piece of equipment that may be used as another method of getting an economic benefit outside the pattern.

I think, from contract to contract, an occasional review of the equipment is in order.

I shall recommend the retention of the present generic language and shall add one more item.

**FINDING: ISSUE #11 - PREVAILING WAGES**

Retain the same language for "Prevailing Wages" as the present CBA.

I recommend that "Tanker" shall be added to the list of equipment in the present CBA.

**ISSUE #12 - DEPARTMENT OF PUBLIC UTILITIES -  
ADDENDUM XI NEW EQUIPMENT**

The union seeks to require the city to equally distribute new equipment among all its stations. New equipment would be assigned by seniority.

This clause does handcuff the city in exercise of its management rights.

**FINDING: ISSUE #12 - DEPARTMENT OF PUBLIC UTILITIES -  
ADDENDUM XI NEW EQUIPMENT**

Retain current contract language and practice.

**ISSUE #13 - STREETS - ADDENDUM XII - WORKING RESTRICTION**

The union seeks a contract provision to allow its workers to clean the sweepers inside when the temperature falls below 32 degrees F.

The city has made this accommodation but has a problem at the 65th Street location because of drainage. The city indicated that it would work on the drainage.

A sweeper can wash itself if it is connected to a hydrant, but many drivers do not utilize this method.

The proposals of both parties are similar.

**FINDING: ISSUE #13 - STREETS - ADDENDUM XII - WORKING  
RESTRICTIONS**

When the temperature falls below 32 degrees F (not windchill), employees operating Sweepers will be permitted to clean the Sweeper at an inside garage where inside facilities are available for that purpose. This privilege may not be exercised if it results in the payment of overtime.

**ISSUE #14 - ADDENDUM IV - DOG WARDEN  
DEAD ANIMAL PICK-UP PREMIUM AND EUTHANASIA PREMIUM**

The union seeks premiums for driving a dump truck to deliver dead animals and for assisting a veterinarian in euthanizing animals.

These economic enhancements go outside the parity of the numerous other already executed agreements between other unions and the city.

Both proposals by the union seek an increase that goes beyond the pattern set by all the unions to-date.

With request to both requests:

**FINDING: ISSUE #14 - ADDENDUM IV - DOG WARDEN  
DEAD ANIMAL PICK-UP PREMIUM AND EUTHANASIA PREMIUM**

The current contract language shall be maintained in so far as it relates to dead animals pick up and euthanasia assistance.

**ISSUE #15 - WASTE COLLECTION**

There was insufficient evidence to establish that the city's management rights regarding overtime work should be limited.

**FINDING: ISSUE #15 - WASTE COLLECTION**

Overtime work shall be assigned in accordance with the present CBA and current practice.

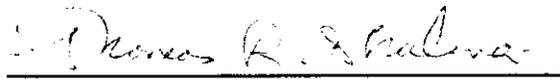
**ISSUE #16 - ARTICLE XVIII COMPENSATORY TIME**

The structure of overtime and compensatory time has been worked out in the pattern contracts.

Fact-finding can not be used to create a unique way of handling this issue.

**FINDING: ISSUE #16 - ARTICLE XVIII COMPENSATORY TIME**

Maintain the present language and practice regarding compensatory time.

  
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THOMAS R. SKULINA  
Fact-Finder

DATED: JUNE 29, 1999