

APR 23 2 08 PM '99

IN THE MATTER OF FACT-FINDING PROCEEDING

BETWEEN

CITY OF YOUNGSTOWN
WATER DEPARTMENT

and

AMERICAN FEDERATION OF
STATE, COUNTY AND
MUNICIPAL EMPLOYEES,
OHIO COUNCIL 8,
LOCAL NO. 2726

(Case No. 98-MED-09-0817
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(Hearing Dates: March 18, 1999
) March 22, 1999
(
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(Findings & Recommendations:
) April 22, 1999
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Representing the City:

John A. McNally, IV
Assistant Law Director

Representing the Union:

Mark T. Carlson
Council Representative

William J. Miller, Jr.
Fact Finder

SUBMISSION

This matter concerns fact finding proceedings between the City of Youngstown Water Department (hereafter referred to as the "City") and American Federation of State, County and Municipal Employees, Ohio Council 8, Local No. 2726 (hereafter referred to as the "Union"). The State Employment Relations Board (SERB) duly appointed William J. Miller, Jr. as Fact Finder in this matter. The parties agreed to extend the submission of this report until April 20, 1999.

The Fact Finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law, and the rules and regulations of the State Employment Relations Board, as amended. Consideration was given to criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board. The City and the Union previously engaged in the collective bargaining process for an extensive period of time before the appointment of a Fact Finder. This Fact Finder had several discussions with the parties prior to March 18, 1998, and on March 22, 1999 attempted to mediate the unresolved issues. Mediation was unsuccessful, and the following issues were considered during Fact Finding:

1. Retiree Life Insurance
2. Prior Service Credit and Seven Samurai
3. Vacation Accruals for Suspension and Leave of Absence
4. Temporary Payment
5. Retirement and Severance
6. Mandatory Drug Testing
7. Wages

1. RETIREE LIFE INSURANCE

It is the position of the Union that the City provide to each retiree a paid up life insurance policy in the amount of \$5,000. The Union contends this type of provision is a relatively common and inexpensive benefit and the amount proposed by the Union is far less than that provided by other municipalities in the area.

It is the position of the City that during prior negotiations, the Union relinquished retiree life insurance as a benefit while obtaining other insurance benefits. The attempt of the Union to bargain this benefit back into the agreement by the granting a paid up whole life insurance policy for every employee upon their retirement would be inappropriate.

FINDINGS & RECOMMENDATIONS

Upon carefully considering the positions of the parties, it becomes clear that there was prior bargaining and as a result of such bargaining, the Union relinquished life insurance as a trade off for other insurance benefits. Under the specific circumstances of this situation, it would be my recommendation that retiree life insurance not be added at this particular time.

2. PRIOR SERVICE CREDIT AND SEVEN SAMURAI

It is the position of the Union that seven bargaining unit employees have their seniority dates adjusted to reflect a seniority date which includes their temporary service with the City of Youngstown. The Union also proposes that these employees be credited with the sick leave accruals that would have been earned during the period of time that such employees worked as "temporary" employees.

It is the position of the City that the appropriate agreement language and applicable City ordinances effectively barred temporary and part-time employees who became full time employees after May 9, 1995 from accruing any benefits for their period of temporary or part-time service. Accordingly the City proposes the following language:

Those temporary employees who received full-time employment letters on January 1, 1997 and October 6, 1997 shall have their employment anniversary dates adjusted to include hours of part-time service rendered prior to receipt of their full-time employment letters. Effective January 1, 1999, temporary, part-time, intermittent or interim employees of the Youngstown Water Department will not receive service credit for their temporary, part-time, interim or intermittent employment for the purpose of any rights or benefits under this collective bargaining agreement.

FINDINGS & RECOMMENDATIONS

After carefully considering the positions of the parties and in order to attempt a resolution to this long standing problem, the following understanding is proposed:

The length of vacation is determined by an employee's employment anniversary date. This employment anniversary date is determined by the continuous public service of said employee with the city of Youngstown, Ohio, in accordance with Ohio Revised Code, Section 9.44, as amended.

Effective January 1, 1999 (and notwithstanding the previous paragraph), temporary, part-time, interim or intermittent employees of the Youngstown Water department shall not receive credit for their temporary, part-time, interim or intermittent employment for the purpose of any rights or benefits under this collective bargaining agreement.

The seven (7) Youngstown Water Department employees known as "the Seven Samurai" will receive credit for their temporary or part-time service prior to their full-time appointment. Service credit will be awarded for the number of hours worked during the temporary or part-time employment. these seven employees will also receive a sick leave adjustment equal to sick leave accruals based on 4.6 hours for each 80 hours in pay status commencing with first day of employment as temporary employee (adjusted seniority date).

3. VACATION ACCRUALS FOR SUSPENSION AND LEAVE OF ABSENCE

It is the position of the Union that the current City policy of discipline is to not only suspend an employee without pay, but to also disallow any vacation accrual for the duration of the suspension. It is the contention of the Union that this policy is tantamount to "double jeopardy" and in effect punishes the employee twice for the same offense. The Union argues if this policy is allowed to continue, the employee will not only lose pay because of the suspension, but will also lose the additional monetary benefit of paid leave. The Union also contends that there is no contractual justification for this loss. The Union believes the vacation entitlement for the employees of the Water Department is clearly an entitlement which needs to be given to the employee in this circumstance.

The City argues that the request of the Union in this instance "flies in the face" of the City's vacation accrual policy that has been in effect since 1986. The City has a "use it or lose it" vacation policy which requires that an employee use all of his / her vacation benefits before the end of the calendar year. Failure to do so results in the loss of any remaining vacation time. Time off the payroll includes time spent off work due to disciplinary suspensions and time off on unpaid authorized leaves of absence. Accordingly, when an employee is under suspension, his vacation hours do not benefit from any accumulation while under suspension. The City proposes that its present policy remain in effect and that there not be any change as requested by the Union.

FINDINGS AND RECOMMENDATIONS

Upon carefully considering the arguments of the parties, it is my considered opinion that the position advanced by the City in this circumstance is more appropriate

than the position proffered by the Union. Accordingly, it is my recommendation that the existing polity which has been in effect for a number of years, remain in effect.

4. TEMPORARY PAYMENT

It is the position of the Union that there be a uniform method of compensation and selection for those employees temporarily assigned to perform supervisory duties. At the present time, the City uses various methods of compensation and selection. The Union has made many proposals, but the City has failed to agree to any of the proposals.

The City contends that the collective bargaining agreement does not contain any language relating to a bargaining unit employee's performance of non-bargaining unit duties. The City proposes that its current practice in the West Avenue Unit and the current practice in the City Hall be continued. In the West Avenue Unit, performance and payment for the Foreman's duties are at issue. During the normal work day, a bargaining unit employee is never assigned to perform the duties of a Foreman. Should a Foreman be off duty, other non-bargaining unit personnel absorb his workload. When a Foreman is needed after normal work hours in emergency situations, bargaining unit personnel with previous supervisory experience and who possess familiarity with all aspects of the Water Department construction jobs are asked to perform these duties. In such cases, the bargaining unit employee is then compensated at the Foreman's rate. In City Hall, only two management positions (Cashier and Turnkey) are ever filled on a temporary basis. A Clerk-Typist assists the Cashier on a daily basis. When the Cashier is off, a Clerk-Typist is assigned to the Cashier's duties and is paid the Information Account Clerk's wages. When a Turnkey Supervisor is off for one day, the most senior Turnkey, who is paid at an Inspector's rate, performs the supervisor's duties. When the supervisor is off for five more work days, the most senior Turnkey is assigned his duties and is paid the turnkey supervisor rate. The City contends these procedures should continue to remain in effect.

FINDINGS AND RECOMMENDATIONS

Upon carefully considering the positions of the parties, the following recommendation for bargaining unit employees, who are temporarily assigned to supervisory positions is submitted as follows:

When bargaining unit employees are temporarily assigned to fills such vacancies, they will receive a rate of pay equal to 50% of the difference between the top rated classification in the affected unit (series) and the rate of the supervisory position assigned,

e.g.: Employee earns \$14.00 per hour
Supervisor earns \$20.00 per hour
Top rated class earns \$16.00 per hour

Difference between = \$2.00
Temporary rate = \$18.00

The City and the Union shall utilize Labor-Management meetings to discuss the classifications affected by this language.

5. RETIREMENT AND SEVERANCE

In this situation, the Union seeks to increase the amount of sick leave to be paid as severance at the retirement, death, or employment separation of the employee. Additionally, the Union seeks to increase an employee's contribution to PERS, and therefore increase the pension benefit due the employee at retirement. At the present time, the collective bargaining agreement provides for the payment of the full value of accumulated vacation and thirty five percent of the value of an employee's accumulated sick time. It is the position of the Union that the sick leave amount to be paid for all hours of accumulated sick leave should not exceed 720 hours. Under the second part of the Union's proposal, the Union requests the conversion of up to three years sick leave and vacation leave which would be deducted on an hour per hour basis on the amounts of severance pay due the employee upon retirement. By making the changes requested, the Union contends that employees who retire will receive an increase in retirement benefits.

The City contends that the current contractual language which provides that an employee will be paid thirty five percent of the value of his / her accumulated sick leave should remain unchanged. It is also the position of the City that the proposal of the Union that employees eligible for retirement be permitted to convert up to 120 hours of sick leave and 240 hours of vacation leave per year in the last three years of employment would be inappropriate. The City contends that to keep employees from taking their vacation, would bring about an unhealthy situation and the request of the Union for increased sick leave allowance would be costly and inappropriate.

FINDINGS AND RECOMMENDATIONS

It is recommended that the following language be implemented in Section 16.04 of the Agreement:

Section 16.04

- a) When an employee retires or leaves City employment for any other reason, the City shall pay him/her the full value of his/her accumulated vacation time and the full value of his/her accumulated sick leave to a maximum amount of seven hundred twenty (720) hours. This shall be paid on the basis of the employee's current hourly wage or on the basis of the hourly wage at the time the benefit was accrued, whichever is

greater.

- b) If an employee dies prior to retirement, the City shall pay his/her designated beneficiary, or the legally appropriate beneficiary, the full value of his/her accumulated vacation time and the full value of his/her accumulated sick leave to a maximum amount of seven hundred twenty (720) hours. This shall be paid on the basis of the employee's current hourly wage or on the basis of the hourly wage at the time the benefit was accrued, whichever is greater. The proper designation of the beneficiary shall be made on forms provided by the City of Youngstown's Risk Management Office.

- c) Employees who are eligible for retirement should be permitted to convert one hundred twenty (120) hours per year of accumulated earned sick leave to wage for each of the last three (3) years of employment prior to their retirement. Any converted amount, which is contributed to the employee's retirement, will be deducted from the amount of severance pay due an employee at retirement. Regarding vacations, it is recommended that an employee be permitted to convert one (1) year of his/her vacation accrual to wage in the same manner, as he/she would convert earned sick leave. Any determination to convert additional vacation pay for the two additional years prior to an employee's retirement can be done if agreed to by the City and the employee pursuant to Article 15 Vacation, Section 15.03 of the January 1, 1996 through December 31, 1998 labor contract.

6. MANDATORY DRUG TESTING

The City contends the current agreement between the City and the Union contains a Drug and Alcohol Testing Program that provides for drug testing of employees based upon reasonable suspicion. The City now proposes to include random testing for all employees in this bargaining unit. The position of the City is taken with recognition of the competing interests involved between the City administration employees and the public. It is the contention of the City that taxpayers demand honesty, integrity, and a workplace free of drug and alcohol use. The City proposes that random drug testing through urinalysis is the most effective and least intrusive method of obtaining the City's interest ensuring public confidence in its employees. Furthermore, the City has reached agreement with six other bargaining units with whom it deals and the inclusion of this bargaining unit would be important for the City. Therefore, the City proposes the following new language under Article 27 - Drug Testing Program:

The City Water Department Alcohol and Drug Testing Policy is attached to this contract and is in force and effect January 1, 1996.

The Union and the City agree that all employees of the Youngstown Water Department will be subject to random drug and alcohol testing.

The following new language would be added as Section C on the last page of Appendix C:

1. Procedures and protocols of the collection of, transmission and testing of the employees' random samples shall conform to the methods and procedures outlined in this Drug and Alcohol Testing Program.
2. The random testing pools for City bargaining unit employees shall be maintained on a citywide basis. The random testing pool shall be maintained and administered by the City / testing center. The percentage of employees to be tested annually will be up to 30% of the random testing pool.
3. Covered employees will be selected from the random selection pool by a computer driven random number process based upon the social security numbers of all eligible City employees.
4. An employee may be assigned to non-safety sensitive duties after testing positive, especially when testing between .04 percent BAC and .099 BAC or its equivalent level under urinalysis screening. Any disciplinary measures to be taken by the Employer will be taken in compliance with Section D of "Policy - Drug Testing / Urinalysis."

It is the position of the Union that for at least the past six years, the City has had the ability to use random testing for CDL purposes, but has never tested one individual. The Union points out that this requirement is established by Federal law, but the City has failed to test in accordance with the established mandate. The Union also contends that there would be an increased cost to the City if random tests are required and the savings proposed by the City as a result of changes in Worker's Compensation would not be realized. The Union argues further that this is a fourth amendment issue related to unreasonable search and seizure and in this case, the City has failed to establish that there is a specific problem requiring random drug testing.

FINDINGS AND RECOMMENDATIONS

Upon reviewing the positions and arguments of the parties, it becomes readily apparent that there has been no specific problem presented by the City and in fact the City has failed to take advantage of its right to perform testing in situations involving CDL drivers. The Union had proposed in earlier bargaining sessions that an alcohol and drug testing policy of the City of Girard would be appropriate in this circumstance. Upon

considering all of the history present circumstances and considerations, it is my recommendation that the alcohol and drug testing policy of the City of Girard be adapted to this present circumstance and be installed for this bargaining unit. This policy would establish pre-employment, random testing, post accident testing, reasonable suspicion testing, return to duty testing, and follow-up testing.

7. WAGES

The Union requests the following general wage increases in each year of the agreement:

<u>EFFECTIVE</u>	<u>GENERAL WAGE INCREASE</u>
January 1, 1999	5%
January 1, 2000	4%
January 1, 2001	5%

Additionally, the Union seeks equity increases for the Utility Payroll Clerk of \$1.00 per hour and the Turnkey for .50 cents per hour. It is also the position of the Union that the classification of Clerk Typist be placed on the same pay schedule as the classification of Laborer. Regarding this request, it is the position of the Union that both classifications are considered to be entry level but Laborers end up receiving \$2.00 per hour more in compensation than Clerk Typists. It is also the position of the Union that while providing equity increases for Clerk Typists, the Union also proposes adjusting the rates of those other clerical positions which are paid less than laborers to an amount that would be equivalent to the current difference between those rates and the Clerk Typist rates.

The City proposes the following wage increases:

<u>EFFECTIVE</u>	<u>GENERAL WAGE INCREASE</u>
January 1, 1999	3%
January 1, 2000	3%
January 1, 2001	3%

The City acknowledges an equity issue related to the Utility Payroll Clerk and would agree that a one dollar per hour increase be added to the base rate. Regarding the Turnkey position, the City proposes a .25 cent per hour increase to the base rate of pay. The City does not propose any changes for the Clerk Typist positions.

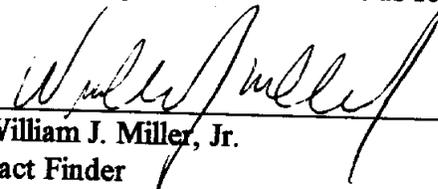
FINDINGS AND RECOMMENDATIONS

Based upon a review of all of the detailed information submitted by the parties. The following wage increases are proposed:

<u>EFFECTIVE</u>	<u>GENERAL WAGE INCREASE</u>
January 1, 1999	4%
January 1, 2000	4%
January 1, 2001	4%

It is recommended that the Utility Payroll Clerk be provided with a \$1.00 per hour adjustment to base pay and that the Turnkey position be adjusted \$0.50 per hour. Regarding the Clerk Typists, it is recommended that the Clerk Typists, by the end of the Agreement, be placed on the same pay scale, in the same manner, and with wages equivalent to, the classification of Laborer. It is further recommend to adjust the wages of those clerical positions (e.g. Data Entry Clerk, Information Account Clerk, Stores Clerk, Stenographer, Stenos and Senior Clerks Step 2 Stenographer Step 4) which are paid at a rate less than the Laborer's rate but more than Clerk Typist to a rate which keeps the same amount of separation between those rates and the final Clerk Typist (Laborer) rate. The parties shall work out the details of this recommendation, but in any event, by the end of the agreement, Clerk Typists should be placed on an equivalent pay scale as the Laborers and the additional classifications should be adjusted accordingly.

In conclusion, this Fact Finder submits his findings and recommends as set forth herein.


William J. Miller, Jr.
Fact Finder

April 22, 1999