

STATE OF OHIO  
MAY 11 1999

**Factfinding Report and Recommendations**

**in the Matter of Factfinding**

**Between**

**The City of Upper Arlington**

**and**

**Teamsters Local 284**

(SERB Case No. 99-MED-02-0097)

MARCUS HART SANDVER  
Factfinder

Hearing Date: September 15, 1999

Report Issued: September 29, 1999

Representing the City:  
Mr. Daniel More  
Assistant City Attorney  
City of Upper Arlington  
Upper Arlington, Ohio

Representing the Union:  
Ms. Susan Jansen  
Attorney at Law  
Logothetis, Pence & Doll  
Dayton, Ohio

## I. Background

This case arises out of negotiations involving the City of Upper Arlington and Teamsters Local 284. These negotiations were for the purpose of bargaining an initial agreement for the newly certified bargaining unit of 39 street maintenance, sanitation and utilities workers. The parties met for the purpose of negotiations on 10 separate occasions beginning in April of 1999. Although many issues were resolved in negotiations, others were not. To help resolve the unresolved issues, the parties through mutual agreement, chose Marcus Hart Sandver as the factfinder to the dispute. Through mutual agreement of the parties, September 15, 1999 was chosen as the date for the factfinding.

## II. The Hearing

The hearing was convened by the factfinder at 9:00 a.m. on the 15<sup>th</sup> of September, 1999 in the second floor conference room in the City's Service Center. In attendance at the hearing for the City were:

1. Mr. Dan More                      Assistant City Attorney
2. Mr. Bob Depinet                Human Resource Administrator
3. Ms. Bonnie Cross                Assistant City Manager
4. Ms. Cathe Armstrong            City Finance Director
5. Mr. Larry Helsul                Public Service Director
6. Ms. Jeanine Amid                Assistant City Attorney

In attendance at the hearing for Teamsters Local 2984 were:

1. Ms. Susan Jansen                Attorney for Teamsters Local 284
2. Mr. Joe Weber                    Service Worker

3. Mr. Mark Gallagher Crew Member
4. Mr. Allen Price Teamsters Local 284
5. Mr. Rollo Faello Service Worker

The parties were asked to submit exhibits into the record. The following were labeled as Teamsters' exhibits:

1. Teamsters' exhibit #1 Prehearing brief. Postmarked September 13, 1999
2. Teamsters' exhibit #2 Loose leaf notebook of supporting materials

The following were labeled City exhibits:

1. City exhibit #1 Prehearing brief. Delivered September 14, 1999
2. City exhibit #2 United Healthcare Insurance Aggregate Stop Loss Report.  
Dated 8/5/99
3. City exhibit #3 Pay ranges offered by the City. Beginning January 1, 2000
4. City exhibit #4 Street Maintenance Worker/Utility Service Worker Entry Level  
Salary

The parties were notified by the factfinder that the hearing would be held in conformity with the rules for factfinding found in O.R.C. 4117 and associated administrative rules as promulgated by the State Employment Relations Board. The parties were invited to make opening statements.

In her opening statement Ms. Jansen pointed out to the factfinder that this was an initial contract between the parties. The bargaining unit consists of 39 employees; 33 of which are full-time and 6 permanent part-time employees. Ms. Jansen stated that one of the goals of the Teamsters in these negotiations has been to provide health insurance and other benefits for the permanent part-time employees. Ms. Jansen noted that the City has collective bargaining

agreements with the FOP, the IAFF, and the FOP/Ohio Labor Council for its police officers, firefighters and communication technicians.

In his opening statement Mr. More emphasized to the factfinder that these negotiations are not for public safety employees but for service employees. Mr. More stated his view that the part-time employees were hired with the understanding that they would not receive health insurance or other benefits and thus chose voluntarily to work for an employer who does not provide benefits. Mr. More estimated that if benefits were paid to the part-time employees that labor costs for these employees would increase by 30 percent. At this point the parties turned to a discussion of the unresolved issues.

### III. The Issues

#### 1. Issue One. Article 3. Dues Deduction.

##### A. Teamster Position

The union position on this issue is that due to the duty of fair and equal representation imposed upon the union under ORC 4117 that all members of the unit should contribute a monthly “fee for service” to the union. In support of this position, the union submitted labor agreements with “fair share” language between the City and the FOP, the IAFF and the FOP/Ohio Labor Council. The union also produced excerpts from a recommendation made by factfinder Frank Keenan in the case of Licking County Engineer and Teamsters Local 637 in which he recommended the fair share fee. Finally, the union produced a list of cities comparable to Upper Arlington from the SERB data base. The comparability data show that for the 11 comparison cities, 8 have fair share provisions in the labor agreements for utility and service workers and 3 do not have such provisions.

B. City Position

The City position on this issue is one of opposition based on philosophical principle. The City representative pointed out that some people voted for the union in January of 1999 but that some people voted against the union too. In protecting the rights of those who don't want union representation, the City opposes the fair share fee. The City representative recognized the fact that fair share fee was in the public safety force's agreements with the City, but Mr. More pointed out that these agreements were negotiated long ago.

C. Discussion

It is difficult for an employer who has a fair share agreement with 3 other labor organizations to prevail on the agreement of philosophical principle. Obviously, this principle has been compromised by the City in not one, in but three other instances. The duty of fair representation imposed upon the union by O.R.C. 4117, and a myriad of other litigation, persuades me that the fair share fee is a justifiable component in the labor agreement.

D. Recommendation

The fair share fee language proposed by the union is recommended.

2. Issue Two. Article 7. Discipline and Personnel Records

A. Union Position

The main difference between the parties on this issue involves the union's proposed language in Section 3. The union wants to have records of written warnings and written reprimands removed from the employee's active personnel file after 24 months and records of suspensions removed after 36 months. The union points out in its presentation on this issue that similar provisions for the removal of prior disciplinary action from the employee's

active personnel file exists in the FOP, IAFF, and FOP/OLC agreements. In support of this agreement, the union provided the factfinder with excerpts from these agreements.

B. Employer Position

The City position on this issue is that removal of any information from an employee's active personnel record is bad public policy. The employer representative pointed out that currently for the service workers there is no policy for the removal of prior disciplinary records from the employee's active personnel file.

C. Discussion

In a way you can make a persuasive argument that the entire public sector collective bargaining process is bad public policy because it limits the power of the employer who represents the taxpayers. Nevertheless, the Ohio legislature in 1983 enacted ORC 4117 in the interest of balancing employee rights at the public workplace with the interests of public employers and taxpayers. The provisions in Article 7 Section 3 are commonly found in public sector (and private sector) labor agreements. I notice that the union proposal allows the City, at its discretion, to retain records for longer than the time specified in some instances. The union proposal also states that no records will be removed from an employee's permanent record of employment.

In looking over the other collective bargaining agreements supplied by the union, I note that the IAFF contract has the same 2 year/3 year provision that the union is here proposing. The two FOP agreements, however, have a 2 year/4 year provision. It seems to that a 4 year retention period for suspensions is probably preferable to a 3 year retention.

D. Recommendation

Section 3 of Article 7 be included in the agreement. Written reprimands and warnings will be removed from the active personnel file after 2 years. Suspensions will be removed after 4 years.

3. Issue 3. Hours of Work and Overtime. Article 10

A. Union Position

There are 4 areas of disagreement between the two parties on this issue. The first is that the union wants Section 10.1 of the agreement to include language which provides that those employees who work as regular part-time employees (32 hours per week) receive 80% of the benefits provided to full-time employees. The second issue is in Section 10.4 where the union proposal is to provide a 6 hour paid break to any employee who works after 1:00 a.m. The third issue is to pay \$75 a week in compensation to those employees who are on call for first call overtime (presently, these employees are paid \$50 a week). Fourthly, the union proposal would provide for overtime pay for any hours worked in excess of eight in a day in addition to 40 hours worked per week.

B. City Position

The City and the union are in substantial agreement over the provisions of Article 10 with the exception of the 4 items discussed above. The City position on the issue of benefits for part-time employees is to oppose this issue on the basis of cost. The City estimates the cost of benefits for full-time employees to be \$6500 per year. The 80% benefit would cost the City about \$5200 per year per employee; over \$30,000 in total for the 6 part-time employees. The City opposes the 6 hour break rule, but does agree to a maximum 16 on 8 off work schedule

in Article 10.4. The City opposes the \$75 per week payment for those on call for call overtime proposing to pay \$50 per week. Finally, the City proposes overtime pay for time in paid status for all hours in excess of 40 hours a week. The City pointed out that the agreements between the City and the IAFF, the FOP and the FOP/OLC all have the overtime after 40 hours provision.

### C. Discussion

Ms. Jansen was quite right in her discussion of this issue to point out that it is bad public policy for a public employer to employ persons in permanent status without providing them with health insurance. Unfortunately, the fact of the matter is that regular part-time employees seldom receive benefits from their employer. Certainly, this is a matter of cost saving to the employer and maybe a matter of little importance to the employee due to the fact that benefits may be provided by a spouse or a parent or another employer.

It is interesting that the union included the "Holbrook Memo" in its supporting documentation for the health insurance issue. I'm not surprised that in his position as solid waste superintendent, Mr. Holbrook found himself at a competitive disadvantage with other employers who do provide benefits to their employees. In fact, in the competitive environment of the Central Ohio labor market, employees have considerable latitude to choose among jobs which suit their needs.

The City obviously benefits from reducing its labor costs by \$30,000 per year through excluding the part-time employees from the health insurance benefit. The employees must find the arrangement acceptable, otherwise they would find other employment. After all, as Mr. More points out, the employees knew from the beginning that the part-time positions provided no benefits.

The City position on the other disputed items in this article are persuasive. The six-hour break proposal seems to greatly limit the employer's ability to schedule employees during times when they might be needed most. I see no justification for the \$75 on call pay as being superior to the \$50 figure. The provision for payment of overtime in excess of 40 hours per week is standard language in both federal statutes (e.g., F.L.S.A.) and in most labor agreements.

D. Recommendation

The language of the City proposal on all sections of Article 10 are recommended.

4. Issue 4. Vacation. Article 13

A. Union Position

The union position on this issue is that employees of the City should be allowed to carry over 3 years of accrual of vacation time from year to year. In support of this position, the union representative directed the factfinder's attention to the FOP/OLC agreement with the City which allows 3 years of carryover. In addition, Ms. Jansen pointed out to the factfinder, the current practice in the solid waste department is to allow 3 years of carryover.

B. City Position

The City position on this issue is to allow carryover of 360 hours or whatever the personnel rule in the department allows, whichever is greater.

C. Discussion

One point raised by the union during the discussion of this issue was never adequately addressed by the City. Namely, what do we do about the people who have already accumulated more than the 360 hours? It seems to me that the 3 year carryover is something that

is well established in at least one part of the service department. The department knows how much vacation each employee has accumulated and has the ability to budget for this on an annual basis. I see no reason to limit the vacation accrual to 360 hours.

D. Recommendations

Vacation accrual to accumulate to a maximum of 3 years time.

5. Issue 5. Subcontracting. Article 17

A. Union Position

The union position on this issue involves two items. The first item is that the union is requesting 30 day advance notice of layoffs and the opportunity to meet and confer with the employer prior to layoffs occurring. The second item is that the union wants language in the contract such that the employer agrees not to employ part-time employees with the intent to layoff full-time employees.

B. City Position

The City position on this issue is to agree to the 30 day advance notice proposal but to disagree with the language which limits the City's ability to substitute part-time employees for full-time employees.

C. Discussion

Flexibility in staffing is critical to the efficient operation of any business enterprise; public or private. I agree with the City position that there may be a situation where a full-time person is no longer needed in a certain position. In the interests of efficient operation, the City may need the ability to change a position from a full-time position to a part-time position.

D. Recommendation

Retain the union's proposal language in Article 17.2 but strike out the last sentence.

6. Issue 6. Temporary and Seasonal Assignments. Article 20

A. Union Position

There are two parts to this issue. The first item concerns the rate of pay an employee receives when he or she is in a temporary assignment. The union proposal on this item is that the employee be paid the wage rate of the new position, or 7 percent above his or her current rate of pay for hours worked in the temporary assignment. The second point in this issue concerns the establishment of a roster of employees who would voluntarily make themselves available for temporary assignments.

B. City Position

The City is in agreement with the union proposal regarding the temporary duty roster (Article 20.2). The City proposal on Article 20.1 is that the temporary employee should be paid the wage rate of his or her temporary position or 7 percent above the present wage only if the assignment is for 4 hours or more and only if the wage received is less than the top of the salary grade for that position.

C. Discussion

The language of Section 20.1 gives the employer the right to assign employees to temporary positions. It seems to me only fair that if the employer is given the unrestricted right to make temporary assignments, the employee should be paid the wage rate attached to that position (or a 7 percent premium) for all hours worked in that position.

D. Recommendation

The union proposal on this issue is recommended.

7. Issue 7. Health Insurance. Article 25

A. Union Position

The union position on this issue is to maintain the present health insurance co-payment of \$2.97 per dependent per month.

B. City Position

The City position on this issue is that the employees will pay 7 percent of the cost of the premium for dependent coverage up to a maximum of \$40 per month.

C. Discussion

The City of Upper Arlington, and its employees are in an enviable yet somewhat uncertain position with regards to health care premiums. The present contribution of \$2.97 per month per dependent is a bargain for the employees. Unfortunately, no one knows for sure if this low rate can be sustained. It is entirely possible that if the premiums go up much higher the employees will have to “participate” at a higher level in the premium share.

Presently, all the other collective bargaining agreements with the City have some type of language that provides that the bargaining unit employees will not pay more in premium than the nonbargaining unit employees. Currently, the nonbargaining unit personnel pay \$2.97 per month per dependent so the bargaining unit employees pay the same amount. In the event that the premiums increase then the employees will have to contribute some fixed amount up to a maximum.

The problem that I have with the employer position on this issue is that no compelling

need has been established to show that this change in premium share is necessary. I would entertain a proposal based on a scenario of costs and premium share, but there is nothing to substantiate the employers initiative to move to the 7 percent share on the part of the employees. Without this substantiation I cannot recommend a change in the health insurance premium.

D. Recommendation

Employee contribution to the health insurance premium shall be \$2.97 per dependent per month.

8. Issue Eight. Wages and Compensation. Article 28

A. Union Position

The union position on this issue is to propose a step type wage system with annual steps that "top out" after 48 months. The union proposal also provides for a 5% raise each year of the contract retroactive to January 1, 1999.

B. City Position

The City position on this issue is to propose a wage increase of 3 percent to base salary for those in the first quartile of the earnings distribution, a 1.5 percent increase in base salary and a 1.5 lump sum amount for those in the second quartile, a .75 percent increase in base pay and a 1.25 percent lump sum for those in the third quartile and a 1 percent lump sum payment for those in the fourth quartile. Twenty-seven of the thirty-three full-time employees in the department are in the fourth quartile of the earnings distribution.

C. Discussion

Both parties submitted wage data from comparable cities. The union data was from cities all around the state, some as many as 120 miles from Columbus. I seriously

doubt if the City of Upper Arlington is competing in the labor market for street maintenance workers with the City of Shaker Heights or Masillon. The City's list of comparables are all within 15 miles of Upper Arlington and are much more credible as comparables.

By the City's own data, for street maintenance workers in the year 2000, Upper Arlington will be below the area average by 1.6 percent. For 2001 the wage figures are 2.2 percent below the average. For the list of comparison cities, Upper Arlington ranks sixth out of eight for the year 2000 and seventh out of eight for the year 2001; only Pickerington will pay less. In my opinion a wage raise can be justified by these data. Most of the raises I have seen in the last year have been in the 2-3 percent "ball park." A raise of this level can be justified based on the data provided by the City.

#### D. Recommendation

A raise of 3% in base pay upon the effective date of the contract. A raise of 2% in base pay on the second anniversary of the agreement and a raise of 2% in base pay on the third anniversary of the agreement. The step system advocated by the union is not recommended.

#### IV. Certification

This factfinding report and recommendation is based upon evidence and testimony presented at a factfinding hearing I conducted on September 15, 1999. It is also the intention of this report that all items tentatively agreed upon and not mentioned in this report are recommended.

  
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 MARCUS HART SANDVER  
 Factfinder