

STATUTORY IMPASSE PROCEEDING UNDER THE  
AUSPICES OF THE STATE EMPLOYMENT RELATIONS BOARD

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IN THE IMPASSE BETWEEN

JACKSON TOWNSHIP BOARD OF TRUSTEES

-AND-

UTILITY WORKERS UNION OF AMERICA,  
LOCAL UNION 568 (HIGHWAY AND PARK DEPARTMENT)

SERB CASE NO.: 99-MED-02-0103

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STATE EMPLOYMENT  
RELATIONS BOARD  
JAN 5 11 31 AM '00

FACT-FINDER'S OPINION AND AWARD  
FACT-FINDER: DAVID M. PINCUS

APPEARANCES

For the Employer

Robert J. Tscholl, Esq.

Advocate

For the Union

Donald P. Opatka

Region III Director

Background of Fact-Finding

The bargaining unit consists of individuals working in the highway and park departments. This group of individuals is represented by the Utility Workers Union of America, Local Union 568, hereinafter referred to as the Union. The Union and the Jackson Township Board of Trustees, hereinafter referred to as the Employer, have engaged in negotiation efforts in accordance with specified procedures in Ohio Revised Code Chapter 4117.

In accordance with Ohio Revised Code Section 4117.14(C)(3), the parties selected this Fact-Finder to make recommendations as to all unresolved issues at impasse. The Fact-Finder was appointed on May 28, 1999. Several mediation

sessions were held with the parties in an attempt to resolve several disputed issues. The meetings took place on August 27, 1999 and September 3, 1999.

The parties' and the Fact-Finder's mediation efforts proved fruitful. The Union agreed to take the tentative agreement to the membership for ratification. One of the tentative agreements included an Employer proposal dealing with weekend scheduling in the Parks Department.

Unfortunately, the bargaining unit failed to ratify the tentative agreement. The parties returned to the bargaining table. As a consequence of minor wage modifications, and the elimination of the weekend scheduling proposal, the tentative agreement was ratified by the membership. When the tentative agreement was reviewed by the Jackson Township Board of Trustees, however, it was rejected. This outcome took place because the tentatively agreed to agreement failed to incorporate provisions dealing with weekend scheduling of Park Department employees.

It should be noted the parties agreed that one issue remained at impasse, the previously discussed scheduling matter. Also, the parties stipulated the issue would be submitted in brief form, as such, there was no need to hold a formal hearing on the issue.

The disputed matter was reviewed by the Fact-Finder by employing criteria specified in Ohio Revised Code Section 4117.14(C)(4)(e), Section 4117.14(G)(7) and Section 4117.14(G)(7)(a)-(f). These guidelines include in pertinent part:

1. Past collectively bargained agreements, if any, between the parties.
2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those uses related to other

- public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests and welfare to the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
  4. The lawful authority of the public employer;
  5. The stipulations of these parties;
  6. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Each of the above-mentioned factors were considered and given appropriate weight when deemed relevant by the Fact-Finder.

The following reflects the evidence and testimony presented by the parties, and the application of the guidelines previously described. The subsequent portions of this report shall summarize each parties' arguments and evidence pertaining to the issue in impasse; followed by the Fact-Finders finding and recommendation.

### **The Employer's Position**

The Employer proposes to modify existing scheduling protocols. It seeks to flex schedule Park Department employees. This situation often occurs on the weekend or at times other than day shifts. The work involved consists of park maintenance and special event situations.

The Employer offers a business necessity justification in support of its proposal. The existing scheduling agreement generates unnecessary overtime payments. The bargaining unit has no "right" to overtime; and overtime should not be viewed by the employees as a guaranteed portion of their wage bargain.

The Employer should have wide latitude in scheduling its operations. This circumstance clearly falls within the Employer's reserved management rights; rights which should not be encumbered or waived unless somehow limited by some express provision in the agreement. An alternative outcome would lead to unanticipated and difficult consequences; an unwarranted circumstance in a governmental entity supported by tax levies.

The flextime schedules sought for possible inclusion are not so unusual. The City of Alliance and the City of New Philadelphia have negotiated similar flextime schedules.

### **The Union's Position**

The Union strongly opposes any change from the status quo involving scheduling of hours of work.

The status quo consists of a number of elements. Presently, Park Department employees are scheduled to work eight hours per day, Monday through Friday. If any work is required on Saturday and Sunday, employees have been given an opportunity to work overtime to complete specified assignments. Employees normally work two to four hours and are released once specific duties have been completed. Weekend duties consist of opening park rest rooms, emptying trash and preparing ball fields.

It should be noted the Employer has historically used part-time and/or temporary employees in the Parks Department on weekends. These individuals have supplemented regular full time employees in completion of these weekend tasks.

The Employer's business necessity argument is flawed. The scheduling of weekend work will not allow employees an opportunity to maintain the parks on weekends. The public uses the parks extensively on weekends. As such, employees would be limited in their ability to perform their duties while the public used the facilities.

Weekend scheduling would generate weekly overtime opportunities. Tasks normally performed during the week would not be completed in a timely manner generating the overtime in question. This circumstance would raise the overall cost of park maintenance that could potentially impact taxpayers' contributions.

Acceptance of the Employer's proposal would cause additional hardships. Weekend scheduling would disrupt the lives of the park employees and their families.

An analysis of comparable municipalities, and their handling of weekend scheduling, supports the Union's position. Plain Township, City of Massillon, and the City of North Canton have negotiated contract language dealing with hours of work. None of these agreements specify weekend or flex time schedules.

#### **The Fact-Finder's Finding and Recommendation**

The Employer's proposal is not recommended by the Fact-Finder. The status quo scheduling arrangement should be retained without any change to the language or provision in dispute.

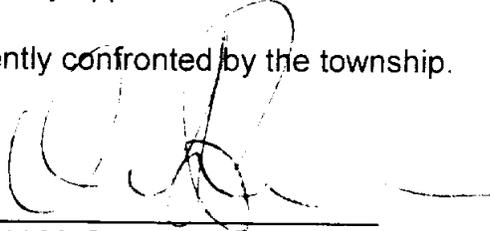
The business necessity arguments proposed by the Employer are not persuasive. Some of the arguments appear extremely subjective; unsupported by

current or near term circumstances. Nothing in the record supports the need for change for fiscal or efficiency reasons. The present paradigm does not appear to generate significant or unusual overtime expenses. Similarly, park related duties and responsibilities have not been diminished as a consequence of the present arrangements.

An employer's ability to schedule work is not totally unfettered. This axiom is especially true when an existing practice or contract language has been mutually agreed to by the parties. All subsequent changes to the status quo must be negotiated subject to reasonable and substantiated justifications.

The previously described finding is further supported by the comparables submitted by the Union. The data provided are much more reflective of the labor market conditions encountered by the Employer, then those contained in its own submission. None of these municipalities have negotiated hours of work provisions which closely approximate the Employer's proposal. Without any significantly distinguishing characteristics rebutting the Union's premise, this Fact-Finder must conclude that the data submitted by the Union most closely approximates the conditions, economically and otherwise, of those presently confronted by the township.

January 5, 2000  
Moreland Hills, Ohio



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Dr. David M. Pincus  
Fact-Finder