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STATE EMPLOYMENT
RELATIONSHIP BOARD

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IN THE MATTER

OF

FACTFINDING

BETWEEN

THE CITY OF MIDDLETOWN, OHIO

AND

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 20

Hearing: April 5, 2000
SERB Case No.: 99-MED-04-0423
Date of Report: April 14, 2000
Issue: Factfinding

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FACTFINDING
REPORT AND RECOMMENDATIONS

Michael Paolucci
Factfinder

ADMINISTRATION

By letter dated June 17, 1999, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as Factfinder between the Parties. On April 5, 2000, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on April 5, 2000, and is now ready for a Factfinding Report and Recommendations.

FACTUAL BACKGROUND

The City lies between Cincinnati and Dayton, Ohio, several miles west of I-75 and has a population of approximately fifty thousand (50,000); the Union represents all hourly full-time employees in the Middletown Wastewater Treatment Plant. On February 25, 1999 the Union was recognized by SERB as the sole and exclusive bargaining agent for the bargaining unit and this is the first Collective Bargaining Agreement between the Parties. The Parties began bargaining on April 27, 1999 and progressed steadily until November 1999 when a tentative agreement was reached. Due to the tentative agreement the previously scheduled hearing for December 13, 1999, before the undersigned was postponed. The tentative agreement was finalized on December 20, 1999 but was rejected twice by the union membership.

Prior to the beginning of the hearing, mediation was inquired into by the Factfinder. However, upon advice of both Parties it was determined that such efforts would not be worthwhile and a hearing was held. Prior to the factfinding hearing, three (3) issues were raised in the Parties' pre-hearing statements. The issues presented were as follows:

1. Article IV - Hours of Work and Overtime

2. Article XVIII - Wages
3. Article XXIX - Contracting out work

The issues will be addressed separately giving consideration to all of the required factors.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (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, 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;
- (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 or in private employment. (emphasis added)

The issues will be addressed giving consideration to all of the required factors.

It is also important to note that the most significant factor will be the tentative agreement already reached through negotiations, but rejected by the Union membership. Although rejected, it is significant that the Parties were able to reach this tentative agreement through mutual compromise after months of negotiation and mediation. It is difficult for the undersigned, after a brief hearing, to understand all of the issues and complications of any collective bargaining relationship better than

the Parties themselves. For that reason, the tentative agreement will be deferred to in reaching each recommendation. Only in the event of plain error or unreasonableness will the tentative agreement be overruled or rejected as a recommendation. It is against this backdrop that the following recommendations are made.

1. ARTICLE IV - HOURS OF WORK AND OVERTIME

The Employer proposes changing the overtime calculation such that more than eight (8) hours worked in one (1) day is not automatically paid at the overtime rate. In addition, it proposes removing vacation days, sick days, and other paid time off from the overtime calculation. In place of these, it proposes modifying Paragraphs IV(c)(2) and (c)(3) such that compensatory time could be chosen by the City in place of overtime payments.

CITY POSITION

The City contends that its proposal would make this contract consistent with that done with the Public Works Maintenance bargaining unit, hereinafter "PWM,". It argues that since the over eight (8) provision was removed from PWM unit, the City removed it from the remainder of the organization. Similarly, it argues that removing paid time off from the overtime calculation would make this contract the same as all other collective bargaining agreements within the City and thus is justified.

UNION POSITION

The Union argues that the tentative Agreement's language fairly addresses the interest of both Parties and does not need to be changed. It contend that the City's proposal will not properly compensate employees for work they must perform. Since the plant is open twenty four (24) hours per day, seven (7) days per week, and since double shifts are mandatory when an employee calls in sick, then it contends that the City's proposal would result in unfair compensation.

RECOMMENDATION

A review of the tentative agreement shows that it fairly recognizes the uniqueness of this unit and compensates them fairly for overtime. For this reason, and since the remainder of the recommendations follow the tentative agreement, it is recommended that the provision remain as that negotiated by the Parties and as contained in the tentative agreement.

2. **ARTICLE XVIII - WAGES**

Prior to the recognition of the Union, the hourly employees were paid based on a traditional Civil Service pay step plan. Advancement through the civil service pay step was based on seniority and was more or less automatic unless work performance fell below standards. The Employer proposed abandoning this pay step method to instead rely on a process where employees must receive Operator's Licenses. The proposal is to have a seven (7) step wage progression (from A through G); to allow employees with Class I licenses to only progress from A through E; to allow employees with Class II licenses to progress from B through F; and to allow employees with Class III licenses to progress from C through G. In addition, the City proposed making present operators without a license to be frozen in their present step; to make operator's who are paid in excess of the hourly rate provided for in the Agreement to be frozen until such time as the Agreement catches up to their rate; and that their proposal not result in a pay reduction for any employee.

The Union agrees with the pay for license portion of the proposal, but wants it to be made applicable to new employees only.

CITY POSITION

The City argues that its proposal does several things. It recognizes that the Operator in Charge (OIC) position, a job which no longer exists since Operators all work alone and there is no one to supervise, but which certain employees are still receiving higher compensation for, will be brought back into line with other Operators. It contends that the distinction made between the different classes of licenses is deserved and will help motivate the employees to be better qualified and improve the general quality of the workforce. Finally, it argues that its proposal will not result in a pay cut for any employees, either now or in the future. For all these reasons, it contends that its proposal is reasonable.

UNION POSITION

The Union is not generally opposed to pay based on licenses. Its disagreement lies in applying the new standard to older employees. It contends that the obtaining of licenses by these older employees will be more difficult. It argues that the Employer's proposal would cause some employees to either obtain the license before the end of this contract or risk a reduction in pay. Based on this fear, the Union can agree on the pay for licensure provision, but wants it made applicable to new employees only.

RECOMMENDATION

While the current employees have a legitimate concern, the language negotiated provides adequate protection from any pay reductions. The City has agreed that it is only attempting to improve the quality of the workforce and will not adversely affect employees who are not able to

obtain licenses. Since no reductions will occur, then the Union's concerns lack the weight they might otherwise have. Since this interest is protected by the negotiated agreement, then it is not in obvious error and it must be recommended. Moreover, it must be noted that the provision itself is complicated. It would be unlikely for the undersigned to recommend a solution that is better than that created by the Parties who are more directly affected by any resulting provision. In light of its complicated nature, it is better to leave the provision up to the Parties to resolve. Since they have already done so in the form of the tentative agreement, then that is justified as the recommended language.

For these reasons, the proposal of both Parties is not recommended and the tentative agreement is recommended.

3. ARTICLE XXIX - CONTRACTING OUT WORK

The Union has proposed adding a "Successor Clause" to the subcontracting out provision. The result would be that any successor employer who is hired as a subcontractor to perform the work now done by City in the Wastewater Treatment Plant would have to immediately recognize the Union as the sole and exclusive bargaining agent for the bargaining unit employees.

UNION POSITION

The Union argued that although the Parties reached agreement on a Successor Clause, since the bargaining unit members determined that the negotiated language provided insufficient protection, then it had to propose new language. It contends that since its proposal only requires recognition of the bargaining unit by a successor until the end of the contract, then it provided

sufficient flexibility for the City. It contends that the employees deserve some protection and this proposal is merely a method to help them transition from public to private employment in the event such should occur.

CITY POSITION

The City contends that the tentative agreement is acceptable as written. While it would prefer to eliminate the second and fourth paragraphs, it contends that the provision contains concessions from both Parties and is thus fair. It argues that the tentative agreement does not impinge on management's right to subcontract and provides employees some protection. It stated that, contrary to the Union's worry, there is not a current plan to subcontract the work. However, it argued that the need to preserve the right of subcontracting is important and it must retain that right.

RECOMMENDATION

The Union's attempt to get stronger language is valid. However, it is attempting to obtain too much, especially in a first contract. The type of protection it asks for is rare, will usually come with a cost given in exchange for such powerful protection, and would be unexpected at this stage of the Parties relationship. While the Union's proposal is certainly valid in a different context, it is inappropriate here, at this time.

For these reasons, the language contained in the tentative agreement is recommended.

April 14, 2000
Cincinnati, Ohio


Michael Paolucci