

AUG 2 10 22 AM '99

FACT FINDING
SERB CASE 99-MED-05-0489

CITY OF YOUNGSTOWN :

The Employer :

-and- :

AFSCME, OHIO COUNCIL 8, :
LOCAL 2312 :

The Union :

SETTLEMENT AND AWARD

APPEARANCES

For the Employer:

John McNally IV, Attorney

For the Union:

James Adams, Staff Representative
Mary Jo Shurstor, Local Union President
Karin Humphries, Treasurer
Linda De Joe, Local Union Vice President
Valerie Henderson, Secretary

MARVIN J. FELDMAN
Attorney/Arbitrator
1104 Superior Avenue, N.E.
Cleveland, Ohio 44114
216/781-6100

This matter came before this fact-finder pursuant to the statutory law of the State of Ohio, the parties having been unable to resolve their differences. The hearing was scheduled and conducted at the conference facility of the employer, Youngstown, Ohio, on July 27, 1999, whereat the parties presented their evidence. The impasse concerned 14 issues, each of which was finally settled by the parties at hearing. The fact finder found that the settlement was fair, just and equitable. The settlement is revealed in the following pages.

Fourteen issues were presented to the fact finder on July 27, 1999, at the City Hall of Youngstown, Ohio. Those issues were fully discussed by the parties and their representatives in an open meeting where all of the nuances and averments were made.

Those issues are stated below and the settlement of each are stated:

1. Parking - The union desired parking fees and the employer sought to retain the language of the contract drafted July 1, 1996 to June 30, 1999. The union dropped their demands in that regard and the issue was therefore withdrawn. The instant language therefore at Article XXII will remain.
2. Exposure Pay - The union sought hazard or exposure increments for 27 bargaining unit members in the classification health, CDA, planning and signal/sign. The union withdrew that demand and therefore that issue may

be considered withdrawn.

3. Random Drug Testing -The new clause is attached hereto and made part hereof and replaces the Appendix in the current contract in that regard.

4. Wages -The union is granted a 4% wage increase in the first and third year of the new three year contract of 4% each beginning July 1, 1999. In the second year the city will pay a 4 1/4 % pension pick-up. In addition, the city will pay in September 1999, the sum of \$225.00 bonus and a bonus of similar amount in September of 2001 to each then member of the bargaining unit.

5. Hospitalization -The clause, section 1 and 2 in the current contract was replaced by the following language:

“Article 13 Hospitalization

Section 1

The City will provide the amount per month per bargaining unit employee to the Ohio AFSCME Care plan for coverage in the following areas: life insurance, drug coverage, hearing aid coverage, vision care coverage and Dental Level II

Section 2

The City will continue to provide all employees hospitalization coverage with the following conditions:

- A. There shall be no reduction in the level of benefits and/or coverage for the length of the contract.
- B. Employees who elect to purchase the City drug rider coverage will continue to pay for coverage as currently required.

- C. The premium for the traditional hospitalization plan and the PPO plan will be entirely paid for by the City for the length of the contract. The traditional deductible will remain 100/300.
- D. Employees eligible for hospitalization coverage who choose not to be covered shall receive \$113.70 per month and be subject to the other conditions as are management employees.
- E. The City shall be responsible for entering into the hospitalization contracts with the various carriers of such insurance. The union will be informed thirty (30) days in advance of any carrier change.
- F. The Union will make every effort to persuade its members to switch from traditional hospitalization plan to SuperMed Select. The parties intend this effort to save the basic premium dollar so that additional coverage can be afforded.”

6. Overtime Comp Pay - This new contract clause request was withdrawn by the union.

7. Police Clerk Training Time - This new contract clause request was withdrawn.

8. Police Clerk Change Days - The employer agreed to revise the police officers contract in that regard and place that language into the new contract between the parties herein.

9. Police Clerk Accumulated Time -The parties agreed to the following:

“H. Police Clerk Accumulated Time - At present, the Police Clerks are the only Police department employees that do not

enjoy an accumulated time benefit. All police officers and 911 dispatchers are contractually permitted to use accumulated time. In recognition of this fact, the City proposes the following language:

'Employees who work overtime may, at the time overtime is worked, elect to be compensated for the overtime in either cash payment, paid with the normal payroll, or receive compensatory time off. Each eligible employee may accrue a maximum of forty (40) hours of compensatory time. Employees must request to take compensatory time off in accordance with the procedures outlined in the YPD General Orders Manual.

In exchange for the re-establishment of this benefit, all Police Clerks will be cross-trained and certified as Index Operators.' ”

10. Holiday Pay -The parties agreed to mutually withdraw their own proposal under the following:

- “3. Holiday Pay
a. Union withdraw request for additional holiday of day after Thanksgiving.
b. City will withdraw request that employee must work last scheduled shift before and the first scheduled shift after the holiday to get paid for the holiday.”

11. Bargaining Unit Exclusion - The parties were directed by the Fact Finder to pursue this matter by direct petition to SERB.

12. Police Clerk Probation - The employer withdrew their request under the

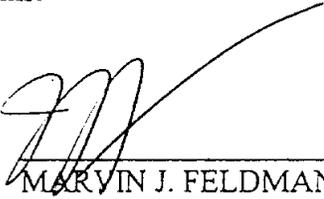
following language:

“1. City will withdraw issue of extending the probationary period for police clerks.”

13. FMLA Policy - The union accepted the following language of settlement in that regard:

“2. Union accept inclusion of language addressing the City’s FMLA policy found in Article 16, Section 12, Para. B.”

14. Bereavement Leave - Union agreed to withdraw any request for change and therefore the present language remains.



MARVIN J. FELDMAN
Fact Finder

(S) John A. McNally
For the City

(S) James M. Adams
For the Union



APPENDIX D



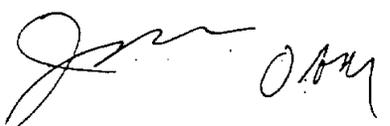
DRUG TESTING PROGRAM

Purpose of Drug Testing Program - Notice

- A. The City has a legal responsibility and managerial obligation to ensure a safe work environment, as well as paramount interest in protecting the public by ensuring that its employees have the physical stamina and emotional stability to perform their assigned duties. A requirement for employment must be an employee who is free from drug dependence, illegal drug use or drug abuse or alcohol dependence.
- B. Liability could be found against the City and the employee if we fail to address and ensure that employees can perform their duties without endangering themselves or the public.
- C. There is sufficient evidence to conclude that use of illegal drugs, the misuse of any drug, or drug or alcohol dependence, seriously impairs an employee's performance and general physical and mental health. The illegal possession and use of drugs and narcotics by the City employees is a crime in this jurisdiction and clearly unacceptable. Therefore, the City has adopted this written policy to ensure an employee's fitness for duty and as a condition of employment to ensure drug tests are ordered based on a reasonable suspicion following an established written policy and procedure and where the employee knows testing is a requirement of employment, and where required as part of a Citywide random drug and alcohol testing program.

Definitions

- A. Employee - All bargaining unit personnel employed by the City.
- B. Supervisor - Both sworn and civilian assigned to a position having day-to-day responsibility for supervising subordinates or responsible for commanding the work element.
- C. Drug Test - A urinalysis test administered under approved conditions and procedure to detect any of the following: Alcohol, amphetamines, barbiturates, benzodiazepines (valium, librium), benzococaine (cocaine metabolite, cannabinoids (THC, Marijuana), opiates (codeine, morphine (from heroin), hydromorphone, methaqualone, methadone and phencyclidine (PCP). These drugs are screened and confirmed at a cutoff concentration of 300 ng/ml with the exception of cannabinoids which is 20 ng/ml, phencyclidine 25 ng.ml and amphetamines at 25 mg/ml and alcohol which will be confirmed at 14/100's of one gram or more by weight of alcohol per 800 milliliters of urine.

- 
- 
- D. Reasonable Suspicion - An apparent state of facts, circumstances or information which exists from an inquiry by the supervisor, or from a creditable source which would induce a reasonably intelligent and prudent person to believe the employee was under the influence or using drugs/narcotics.

General Rules of the City

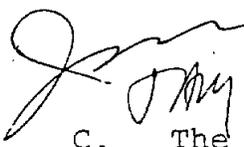
- A. Employees shall not take any narcotics or dangerous substance unless prescribed by a person licensed to practice medicine. Employees who are required to take prescription medicine shall notify their immediate supervisor of the medication prescribed and the nature of the illness or injury. Any statutory defined illegal use of drugs by an employee whether at or outside City employment will not be tolerated.
- B. All property belonging to the City is subject to inspection at any time without notice as there is no expectation of privacy. Property includes, but is not limited to, City-owned vehicles, desks, containers, files and storage lockers.
- C. City employees who have reasonable basis to believe that another employee is illegally using drugs or narcotics shall report the facts and circumstances immediately to their supervisor.
- D. Failure to comply with the intent or provisions of this general order may be used as ground for disciplinary action. Refusal by a City employee to take the required drug test or follow this general order will result in immediate relief from City duties pending disposition of any administrative personnel action.

Policy - Drug Testing/Urinalysis

- A. All prospective appointees for any position, sworn and civilian in the City, shall be routinely tested for drug or narcotic usage as part of their pre-employment medical examination. The testing procedure and safeguards set forth in this order shall be followed by the examining physicians and others involved in the testing procedure.
1. Before the testing, the applicant will be advised of the drug testing and will receive thorough briefing during which collection and analysis procedures will be explained.



2. Refusal to take the test or test results reporting a presence of illegal drugs or narcotics or the use of a non-prescription drug, shall be the basis of discontinuing an applicant in the selection process. Any use or possession that constitutes a criminal offense shall preclude any further consideration for employment.
 3. Applicants found to be involved in the illegal sale, manufacture or distribution of any narcotic/drug will be permanently rejected.
 4. Applicants demonstrating addition to any narcotic/drug will be permanently rejected.
 5. Any improper use of any narcotic/drug by an applicant after application will be grounds for permanent rejection.
 6. The results of drug tests on applicants for the position of an employee shall be kept confidential.
- B. Current employees of the City shall be required to submit to a test for alcohol, drug or narcotic usage as outlined below.
1. A supervisor may order a drug test when there is a reasonable suspicion that an employee may have been using any drug, alcohol or narcotic and that this use may present a risk to their safety or that of fellow employees or the public.
 2. The purpose of the test is to determine if any drug, alcohol or narcotic is present in the employee's system. The employee shall be advised of the content and details of the allegation.
 3. A supervisor who orders a drug test when there is a reasonable suspicion of the use of any drug, alcohol or narcotic shall forward a report containing the facts and circumstances directly to the City. The employee shall be verbally advised of the reasonable suspicion at the time of the test and receive a written statement of the same reasonable suspicion within twenty-four (24) hours of these test.
 4. Test results reporting a presence of illegal drugs or narcotics, or the use of prescription drugs without a prescription or the abuse of any over-the-counter drug or alcohol will be submitted to the City for further action.

 
C. The procedure for administering the urinalysis program is outlined in Appendix 1 of this General Order.

D. Employees who have been found to be using any drugs which are illegal under the Ohio Revised Code shall be submitted to disciplinary action. If the employee agrees to enter and successfully complete a rehabilitation program, the disciplinary action will not exceed thirty (30) calendar days for the first offense. Thereafter, for a period of two years, the employee shall be subject to random urinalysis at any time.

E. Random Drug and Alcohol Testing Procedure

1. Procedures and protocols for the collection of, transmission and testing of the employees random samples shall conform to the methods and procedures outlined in "Urinalysis Procedures" of this Appendix.

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 a testing center contracted with by the City of Youngstown. The percentage of bargaining unit employees to be tested annually will be up to ten percent (10%) in 1999, seventeen percent (17%) in 2000 and twenty-five percent (25%) in 2001.

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. Employees who have tested positive on the above-defined random drug and alcohol test will be disciplined in accordance with the following language:

First positive test - Thirty (30)-day suspension or the completion of an EAP treatment program. Thereafter, the employee will be subject up to five (5) random tests during the one (1)-year period after completion of the EAP treatment program. If the employee fails to complete the EAP treatment program, then the employee will receive discipline, up to and including discharge.



Second positive test - Employee will automatically receive a ten (10)-day suspension and complete an EAP treatment program. Thereafter, the employee will be subject to eight (8) random tests during the two (2)-year period after completion of the EAP treatment program. If the employee fails to complete the EAP treatment program, then the employee will receive discipline up to and including discharge.

Third positive test - Employee will receive discipline up to and including discharge.

Urinalysis Procedures

A. Obtaining Urine Samples

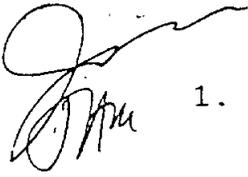
1. The employee will be notified of the test requirement just prior to being transported without delay to the medical facility or laboratory designated by the City to obtain the urine sample. At the time of the test, the subject will be notified of the specific drugs which will be screened by the test. The employee will be accompanied by a testing officer of the same sex.
2. The room where the sample is obtained must be private and secure with documentation maintained that the area has been searched and is free of any foreign substance. The testing officer (same sex) shall be in the presence of the employee to ensure that the sample is from the employee and was actually passed at the time noted on the record. Specimen collection will occur in a medical setting and the procedures shall not demean, embarrass or cause physical discomfort to the employee.
3. An interview with the employee prior to the test will serve to establish use of drugs currently taken under medical supervision. The employee/applicant will be required to identify any prescription or non-prescription medication taken in the past week. The medication and time last taken will be noted on a City form. Medications containing narcotic drugs, hypnotics, stimulants, depressants, sedative and most muscle relaxants must be reported. Drugs such as aspirin, cold medications, tylenol, birth control pills and antihistamines, except those containing codeine, need not be reported. In the event the employee/applicant is taking medications which require report, the testing officer must attempt to verify the validity of this use through interviews and request the employee/applicant to provide a copy of the prescription. The completed City form must accompany the specimen.



4. The employee will be allowed to select two of several containers to be used to hold the sample.
5. The containers will be new and free of contaminants.
6. The employee/applicant will deposit a minimum volume of urine (2 ounces) in the container and tightly cap it. Employees/applicants who are unable to provide the adequate sample initially will remain under observation until able to do so.
7. A tamper proof seal will be used on the container.
8. The container will be labeled in front of the employee.
9. Each step in the collection and processing of the urine sample shall be documented to establish procedural integrity and the chain of evidence.
10. Social security numbers will be used as donor identification number. This number will be utilized to identify the sample throughout the collection and testing phases of the urine screening. The purpose of the donor identifying number is to protect the identity of the donor providing the sample. Laboratory testing personnel will only have access to the identifying number and not the individuals name.
11. Testing individuals will be assigned by the City.
12. The second sample container shall be secured and preserved according to generally accepted lab procedures at the site where the samples are passed and collected. In the event the first sample shows a presence of any illegal drug or narcotic, the employee shall have the option of having the second sample tested (at his own expense) at another qualified medical facility or laboratory, generally accredited by a standardizing body within a reasonable distance. To facilitate this testing, the second sample shall be secured from the collection site by a Management Representative and the Union Representative and transported or cause to be transported to the second laboratory where it will be tested. The tests employed must be of the same type employed by a primary laboratory.

B. Processing Urine Samples

To ensure optimum accuracy, the tests shall be drug specific. the drug-abuse screening test will consist of two tests:



1. The initial test of each urine sample shall employ a methodology different from the secondary confirmation test.
2. The initial screening test shall be the EMIT (enzyme Multiplied Immunoassay Technique). The test process at the laboratory for the initial analysis will be completed in 24 to 48 hours.
3. The secondary confirmation test of any positive findings in the initial test shall be the gas chromatography/mass spectrometry.
4. The test procedure for determining the presence of cannabinoids will be immunoassay. Secondary confirmation test of a positive finding for the presence of cannabinoids will be gas chromatography/mass spectrometry.
5. The foregoing drug testing procedures are not meant to be an exhaustive compilation of the tests that will be or could be used to implement the personnel drug screened program.
6. The testing laboratory will make provision to properly preserve, store and secure one aliquot of the original urine specimen to be preserved and made available for purposes of independent confirmation testing by experts chosen and authorized by the subject employee. This "employee confirmation" test will be conducted at the testing laboratory jointly with the experts representing the subject employee.