

STATE OF OHIO
DEPARTMENT OF REVENUE

FEB 11 10 18 AM '00

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In Regard to the Matter of the Fact-Finding Between:

THE CITY OF NEW PHILADELPHIA)
)
 -AND-) 99-MED-08-0656
)
 AMERICAN FEDERATION OF STATE,)
 COUNTY AND MUNICIPAL EMPLOYEES,)
 OHIO COUNCIL 8, AFL-CIO)

APPERANCES

For The City

Robert J. Tscholl, Esq., Attorney
Beth Gundy City Auditor

For The Union

Fred Hartsel Staff Representative
Debbie Pearch Clerk III - Water Department
Heather Boder Data Processing Clerk II -
Income Tax

BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND

The Employer, the City of New Philadelphia, exercises Charter and Statutory authority to provide municipal services to its 18,500 residents through a work force of some 150 full and part-time employees.

The City's Police, Firefighters and its Service Employees in the Street, Sanitation, Water and Park Departments are organized in separate Collective Bargaining Units.

Local 1958, Ohio Council 8, American Federation of State, County and Municipal Employees was selected to represent a unit consisting of full-time and part-time Clerical Employees in the classifications of Administrative Assistant; Administration Services Scheduler; Clerk (Classes 1, 2 & 3); Data Processor Clerk (Classes 1, 2 & 3); Legal Secretary; and Payroll Clerk.

At the time of the arbitral hearing there were twelve members of the Unit - six full-time and one part-time Data Processing Clerks; one Payroll Clerk, three Clerks, one Legal Secretary and one Administrative Assistant to the Auditor.

Following the recognition by the City of the Union, four negotiating sessions were held during the period of July through October, 1999, looking towards the entry into an initial Bargaining Agreement.

The parties reached tentative agreement on some thirty-two Articles, and further agreed that the terms of the Contract would be retroactive to January 1, 2000, and remain in effect for an initial term of three years.

However, impasse was reached on terms involving the following ten issues:

1. Definition of part-time employment;
2. Wages;
3. Employer pick-up of employee P.E.R.S. contribution;
4. Residency requirement;
5. Hours of work; time clocks;
6. Probationary period;
7. Uniforms;
8. Vacations;
9. Meal allowance;
10. Reclassification of employees in Clerk position.

The undersigned was appointed on October 1, 1999 by the State Employment Relations Board to serve as Fact-Finder.

At the direction of the parties a Mediation session and Fact-Finding Hearing was scheduled for November 11, 1999 at the Municipal Building in New Philadelphia, Ohio.

Timely in advance of the hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and O.R.C. Section 4117.14(6)(3)(a).

The Fact-Finder attempted mediation to assist the parties to reach mutually acceptable resolutions of the disputed terms, but was unsuccessful.

Thereafter, the Fact-Finder conducted an evidentiary hearing in which the parties supported their proposals on each of the disputed issues. The Union offered evidence with respect to the current pay of the members of the Bargaining Unit, other employees of the City, two August 6, 1998 wage and fringe benefit studies prepared by the Ohio Council 8 Research Department for Ohio Cities with populations ranging

from 30,000 to 50,000 and for 10,000 and below, a Wage-Benefit Report for Tuscarawas County employers prepared by the Tuscarawas County Community Improvement Corporation in cooperation with the Ohio State University Extension Service: Ordinance No. 39-97 and its predecessor, Ordinance No. 25-87, of the City of New Philadelphia which established guidelines for staffing, promotion, compensation and benefits for non-bargaining unit employees, employee wage schedules from the Cities of Dover and Coshocton, and excerpts from both the subsisting AFSCME Contract, covering Service Employees, and the F.O.P. Contract, covering Police Officers, showing the compensation, uniform allowance and meal allowance provided to the members of these Bargaining Units.

In addition, the following members of the Bargaining Unit provided statements as to their functions and duties:¹ Cathy Casebeer - Auditor's Office - Data Processing Clerk 1; Tanya Dickey (nee Ferris) - Administrative Assistant to the Auditor - Clerk 1; Amy Metcalf - Administrative Assistant to Service Director - Clerk 1; Heather Radar - Data Processing Clerk 1; Judy Baker - Data Processing Clerk 2; Debbie Pearch - Water Office - Clerk 3; Maureen Wenger - Water Office - Clerk 2; Stacie Heck - Water Office - Data Processing Clerk 1; Wanda Lane - Prosecutor's Office - Administrative Coordinator; Cindy Ley - Street Department - Data Processing Clerk 3; Rita

1. Only the Job Description for the Data Processing Clerk position was available.

L. Roth - Part- time Data Processing Clerk and Connie Simmons
- Data Processing Clerk 2.

In making his recommendation upon all of the disputed proposals for provisions to be included in the prospective Collective Bargaining Agreement, the Fact-Finder has been guided by the factors set forth in O.R.C., Section 4117.14(C)(4)(e), and Ohio Administrative Code, 4117-9-05(K) namely:

"(a) Past collectively bargained agreements, if any, between the parties;

"(b) Comparison of the unresolved issues relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

"(c) 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;

"(d) The lawful authority of the public employer;

"(e) The stipulations of the parties;

"(f) 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."

FINDINGS AND RECOMMENDATIONS

I. Definition of Part-Time Employees.

Current Status.

Ordinance No. 39-97 sets forth the terms and conditions of employment for non-Bargaining Unit employees and defines, in Section 1(B) a "part-time employee" ... "as any individual who works less than thirty-two (32) hours a week."

The Union's Proposal.

The Union proposes to redefine full-time employees as those who are scheduled to work twenty hours a week or more and, correspondingly, part-time employees as those who are scheduled to work less than twenty hours. The Union makes its proposal so as to allow the present part-time employees in the unit to qualify for the fringe benefits provided only to full-time employees.

The City's Proposal.

The City seeks to retain the current definition of part-time employment. It points out that the demarcation between full-time and part-time employees as set forth in the Ordinance was agreed to by the other Bargaining Units.

FINDINGS AND RECOMMENDATIONS

The Fact-Finder acknowledges the Union's concern that part-time employees do not receive longevity pay or health and life insurance coverages. Nonetheless, he believes it is inappropriate to carve out a special definition of part-time employment just for the Clerical Unit. The City, as a matter of equity, would likely have to extend the same benefits to all part-time employees thereby significantly escalating fringe benefit costs.

Thirty-two hours is a commonly used measure to demarcate the difference between full-time employment and part-time employment, and the Fact-Finder accordingly finds appropriate and recommends that the parties adopt as Article 2 of their Contract the following:

"ARTICLE 2 RECOGNITION:

"The Employer recognizes the Union as the sole and exclusive representative of all permanent employees in the bargaining unit as defined below; for the purpose of collective bargaining with respect to wages, hours and other terms and conditions of employment.

"Included: All full-time and part-time Clerical Employees including: Administrative Assistant; Administrative Services Scheduler, Clerk (classes 1, 2 and 3); Data Processor Clerk (classes 1, 2 and 3); Legal Secretary; and Payroll Clerk.

"Excluded: All supervisors, management - level, confidential and professional employees as defined in the Act, all other employees who are currently represented by an employee organization in another bargaining unit, part-time, seasonal and casual employees.

"NOTE: Should at any time during the term of this Agreement, new classifications are created by the City, which are similar to any of those listed above, then said classifications shall become part of the bargaining unit and be included through an amendment of supplemental agreement. The City and Union shall arrive at agreement through the process described under Article 21, New Jobs.

"A part-time employee for purposes of this Agreement, is an employee who is scheduled on a regular basis to work thirty-one (31) or less hours per week."

II. Wage Schedule.

Present Status.

The present, 1999, Wage Schedule for Bargaining Unit employees is as follows:

Administrative Services Scheduler	\$13.16
Legal Secretary	\$ 8.16
Data Processor Clerk - Step A	\$ 8.46
Data Processor Clerk - Class 1	\$ 8.91
Data Processor Clerk - Class 2	\$ 9.26
Data Processor Clerk - Class 3	\$ 9.61
Data Processor - Part Time	\$ 6.51
Clerk - Class 1	\$ 8.32
Clerk - Class 2	\$ 8.74
Clerk - Class 3	\$ 9.31
Clerk - Part Time	\$ 4.99

The thirteen present Clerical employees in the Unit, their job classifications, Steps (Class) and their 1999 wages are shown below:

<u>Employee</u>	<u>Classification</u>	<u>Step (Class)</u>	<u>Hourly Wage Rate</u>
Pam Maurer ²	Data Processing Clerk	A	\$ 8.46
Stacie Heck	Data Processing Clerk	1	\$ 8.91
Cathy Casebeer	Data Processing Clerk		\$ 8.91
Heather Rader	Data Processing Clerk	2	\$ 9.26
Connie Simmons	Data Processing Clerk	2	\$ 9.26
Cindy Ley	Data Processing Clerk	3	\$ 9.60
Judy Baker	Data Processing Clerk	3	\$ 9.60
Rita Roth	Data Processing Clerk (Part-Time)		\$ 6.52
Amy Metcalf	Clerk	1	\$ 8.32
Maureen Wenger	Clerk	2	\$ 8.74
Debra Pearch	Clerk	3	\$ 9.31
Tanya Dickey	Administrative Assistant/Auditor	2	\$11.71
Wanda Lane	Legal Secretary	1	\$ 8.16

The Union proposes to increase the wage rates according to the following schedule:

2. Ms. Maurer became a member of the Bargaining Unit subsequent to the establishment of the date of the arbitral hearing and the receipt of the pre-hearing submissions.

Administrative Assistant to Auditor

	2000	2001	2002
Step A	13.77	14.35	14.96
Step B	14.25	14.86	15.50
Step 1	14.75	15.38	16.05
Step 2	14.97	15.61	16.29
Step 3	15.24	15.90	16.59
Step 4	15.45	16.12	16.82

Legal Secretary

	2000	2001	2002
Step A	13.69	14.27	14.88
Step B	14.17	14.78	15.42
Step 1	14.67	15.30	15.97
Step 2	14.89	15.53	16.21
Step 3	15.16	15.82	16.51
Step 4	15.37	16.04	16.74

Payroll Clerk

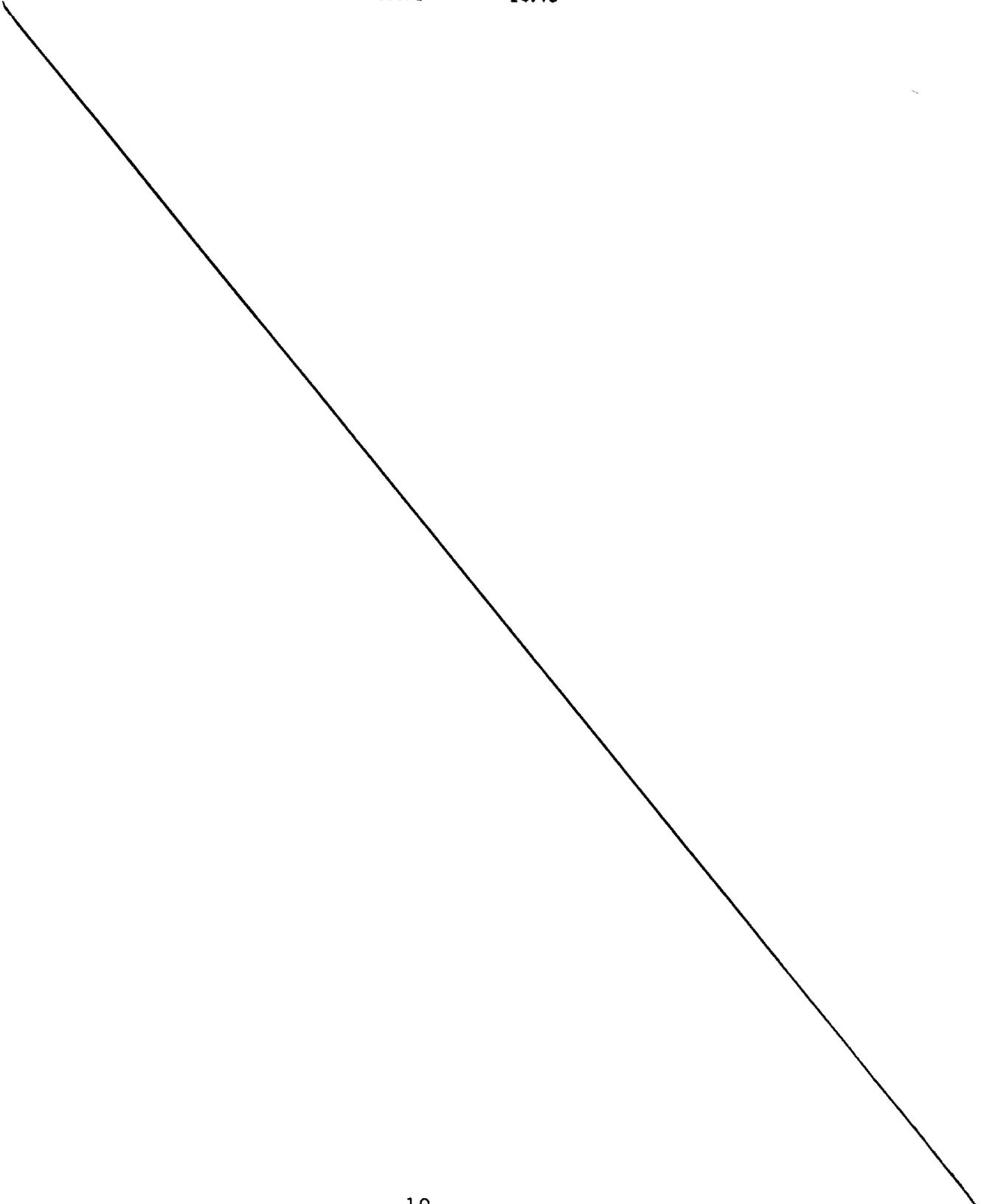
	2000	2001	2002
Step A	13.69	14.27	14.88
Step B	14.17	14.78	15.42
Step 1	14.67	15.30	15.97
Step 2	14.89	15.53	16.21
Step 3	15.16	15.82	16.51
Step 4	15.37	16.04	16.74

Data Processing Clerk

	2000	2001	2002
Step A	13.65	14.23	14.84
Step B	14.13	14.74	15.38
Step 1	14.63	15.26	15.93
Step 2	14.85	15.49	16.17
Step 3	15.12	15.78	16.47
Step 4	15.33	16.00	16.70

Clerk

	2000	2001	2002
Step A	13.41	13.99	14.60
Step B	13.89	14.50	15.14
Step 1	14.39	15.02	15.69
Step 2	14.61	15.25	15.93
Step 3	14.88	15.54	16.23
Step 4	15.09	15.76	16.46



The Union's schedule would equilibrate the pay of the Legal Secretary and Payroll Clerk jobs, provide first year raises exceeding 60% and additional second and third year increments averaging 4.5%.

The Union asserts that its employees are underpaid in comparison with members of other City Bargaining Units and in comparable communities.

Thus, the Union notes that under the Service Employees Contract, laborers hired "off the street" earn \$11.00 per hour whereas Clerks earn only \$9.00 after fifteen years of service.

Further, the 1996 compensation of Dispatcher/Jailor-Meter Officers in the Police Unit amounted to \$12.06. The hourly rates of other Service Employees range from \$11.13 to \$12.73, depending upon length of service.

The Secretary classification in the Waste Water Division for the City of Dover was reported as \$11.78 per hour, while the wage for the Cemetery Secretary for the City of Coshocton was set at \$9.93 and the wage of that City's Home Health Clerk and Utility Billing Clerk was established at \$11.57 per hour.

The Research Department of AFSCME Ohio Council 8 reported that the average annualized, over-term, increases in wage settlements for the quarter ending May, 1998 was 3.22% or 36.08 cents per hour for Ohio cities with between 30,000 and 50,000 residents. The 1998 median salary for the "Clerks" classification was \$24,109.00.

A similar study completed in 1998 for the cities with populations of less than 10,000 revealed that the "Clerks" in

eight reporting Cities had an average top grade rate of \$21,061.00 per year.

Information was also supplied concerning private wage rates in Tuscarawas County, however, the data related only to managerial and production employees and not to clerical jobs.

The City's Proposal.

The City proposes the following wage schedule:

"ARTICLE 27. WAGE SCHEDULE:

<u>Section 1.</u>	<u>Eff 1/1/2000</u>	<u>Eff 1/1/2001</u>	<u>Eff 1/1/2002</u>
	<u>- Per Hour Base Rates -</u>		
Clerk			
Part-Time	\$ 7.50	\$ 7.75	\$ 8.00
Step A	\$ 8.50	\$ 8.75	\$ 9.00
Step 1	\$ 8.95	\$ 9.20	\$ 9.40
Step 2	\$ 9.25	\$ 9.50	\$ 9.70
Step 3	\$ 9.55	\$ 9.80	\$10.00
Step 4	\$ 9.85	\$10.10	\$10.30
Legal Secretary & Data Processor Clerk			
Part-Time	\$ 8.50	\$ 8.80	\$ 9.10
Step A	\$ 9.50	\$ 9.80	\$10.10
Step 1	\$10.00	\$10.30	\$10.60
Step 2	\$10.30	\$10.60	\$10.90
Step 3	\$10.60	\$10.90	\$11.20
Step 4	\$10.90	\$11.20	\$11.50
Administrative Assistant (Auditor)			
Step A	\$11.60	\$12.00	\$12.40
Step 1	\$12.10	\$12.50	\$12.90
Step 2	\$12.50	\$12.90	\$13.20
Step 3	\$12.90	\$13.20	\$13.60
Step 4	\$13.20	\$13.60	\$14.00

- Step A - Members with less than one (1) year service.
- Step 1 - Members with at least one (1) year but less than five (5) years service.
- Step 2 - Members with at least five (5) years but less than ten (10) years service.
- Step 3 - Members with at least ten (10) years but less than fifteen (15) years service.
- Step 4 - Members with at least fifteen (15) years service."

The City Council has authorized a 3% across-the-board increases for employees which, it claims, brings this Unit's wages into line with counterpart Tuscarawas County Office Worker rates. The dollar increase going from one step to another within the schedule was "flattened" to achieve consistency in the progression.

To do more would cause the City to become "whip-sawed" by the other Bargaining Units whose Contracts are currently in negotiation, and who would demand equal treatment.

FINDINGS AND RECOMMENDATIONS

Clerical employees received only 2.5% raises in each of the last two calendar years. Unfortunately, data on their total compensation - the best measure of employee welfare - was not supplied.

Moreover, the comparative wage data offered by the Union was of limited value for several reasons. First, throughout the State the labor market conditions for Uniformed and Skilled Trade employees, and hence their wage rates, are significantly different from those obtaining for Clerical personnel. Second, New Philadelphia has some 18,500 residents. Comparisons with cities of under 10,000 or above 30,000, are similarly suspect because of differing economic conditions. Moreover, Tuscarawas County tends to be a relatively low wage and low cost of living area compared to some of the other regions in the State. Next, although job titles may be the same, the content of the various clerical classified jobs may differ significantly from one jurisdiction

to another. Comparisons with wages paid to private sector employees are not persuasive because traditionally, private sector wage rates tend to outstrip those of Government employees, although the stability of employment and other benefits of Government service tend to provide off-setting considerations.

Perhaps the most useful data was from the cities of Dover and Coshocton which in terms of relevant characteristics, most closely resemble New Philadelphia. As of April, 2000 the Dover Store Clerk will earn \$14.59 per hour, the Utility Billing Clerk will receive \$13.08 and the Water Waste Division Secretary will make \$12.33 an hour.

In Coshocton the Cemetery Secretary will earn \$9.93 until July 1st of this year, the Utility Billing Clerk receives \$11.52 and the Payroll Clerk for the Street and Sanitation Division is entitled to \$10.03 an hour.

While the Union's proposals for wage increases, which include more than a 60% raise in the first year of the Contract, are unrealistic, the Fact-Finder concludes that the available evidence supports the claim of the members of the Clerical Bargaining Unit for an equity adjustment. Their wage adjustments of 2.5% in each of the last two years were among the smallest in the State.

The individual members of the Bargaining Unit impress the Fact-Finder as being competent, diligent and dedicated.

The job responsibilities discharged by members of this Bargaining Unit involve many administrative functions, and not

simply the usual typing, filing and routine record processing and maintenance. For example, Data Processing Clerk Heather Radar testified that she checks tax returns filed by residents and bills them for delinquencies. Cindy Ley, another Data Processing Clerk, handles incoming calls regarding recycling, sanitation, street, sewer and traffic problems, processes complaints and dispatches appropriate personnel to deal with the problems.

Tanya Dickey, Assistant to the Auditor, responds to payment complaints from vendors.

Data Processing Clerk I, (Payroll) Cathy Casebeer is responsible for validating employee vacation requests, and verifying their vacation and holiday entitlements.

Amy Metcalf, a Clerk 1 serving as Administrative Assistant to the Service Director, processes building permit applications and building code violation complaints. She functions as a quasi-building inspector for "obvious" violations of the City's building code, and sends out violation letters.

Stacie Heck, a Data Processing Clerk in the Water Department, schedules appointments for Meter Readers and enters meter readings, handles resident telephone calls and complaints and sells parking passes and garage sale permits.

Taking this into account the Fact-Finder finds appropriate and recommends that the parties adopt the following wage schedule as Article 27:

"ARTICLE 27. WAGE SCHEDULE:

actual pay. Beginning in 1998 the Employer pick-up was discontinued in exchange for a 7% base wage rate increase.

The Union's Proposal.

The Union proposes to have the Employer reinstate its pick-up of the 4.5% employee contribution to P.E.R.S. without a corresponding reduction in the employee's pay. In effect, it asks for an additional across-the-board 4.5% wage increase.

The City's Proposal.

The City offers to allow employees the option of having the City pick-up their P.E.R.S. contribution, but with an offsetting deduction from the employees' paychecks. Employees realize Federal Income Tax savings since the tax rates are applied to the employees' income as reduced by the Employer pick-up.

FINDINGS AND RECOMMENDATIONS

The Fact-Finder has recommended an appropriate equity adjustment to the wages of members of the Bargaining Unit in all classifications. Providing an extra four and one-half percent increase in compensation by way of Employer pick-up of the employee's mandatory P.E.R.S. contribution without reduction of employee wages would trigger competitive demands by all other Bargaining Units, and create morale problems among non-Bargaining Unit employees unless they were given the same benefit. While the City does not plead "inability to pay," its resources are finite, but demands for Municipal services are infinite. Every dollar spent on employee

compensation means one less dollar available to meet the other needs of its citizenry.

Accordingly, the Fact-Finder finds appropriate and recommends that the parties adopt as Article 27, Section 2 the follows:

"Section 2. The option of a 4-1/2% pension deferral plan will be made available to the members of the bargaining unit."

IV. Residency Requirement.

Current Status.

Presently, employees of the City are required to live within the boundaries outlined in the City of New Philadelphia Ordinance Chapter 159.03.

The Union's Proposal.

The Union seeks to expand the residency boundaries to become co-extensive with that of the School District. It notes that employees who wish to move to suburban locations have to apply to the City Council for an exemption. At least two such exemptions have been granted. However, the Union acknowledges that the present members of the Bargaining Unit are in compliance with the Ordinance.

The City's Proposal.

The City proposes to incorporate in the Collective Bargaining Agreement the present residency requirement established by Ordinance.

FINDINGS AND RECOMMENDATIONS

It is neither uncommon nor unreasonable for a municipality to require employees to reside within its borders. The policy allows its citizens a preference over non-residents in applying for employment opportunities so as to facilitate employee involvement with the community, its organizations and activities. While there is an "escape hatch" available for current employees who have need to relocate to suburban areas, it is available only through the Councilmanic legislative process. Although there was no evidence that any of the members of the Bargaining Unit currently wish to relocate outside the City so as to suggest the existence of a current problem in need of remediation, the Fact-Finder believes an adjustment in the residence requirement so as to allow employees to live within the School District is not inappropriate and will not significantly effect their ability to involve themselves in city activities and organizations.

Accordingly, the Fact-Finder finds appropriate and recommends that the parties adopt the following as Article 40 of their Collective Bargaining Agreement:

"ARTICLE 40 RESIDENCY REQUIREMENTS:

"Section 1. All employees of the bargaining unit shall actually live within the school district limits of the City of New Philadelphia.

"Section 2. All newly hired employees of the City of New Philadelphia shall as a condition of employment with the City move into the outlined limits within sixty (60) days after the actual date of hire."

V. Hours of Work: Time Clock.

Current Status.

At present the Clerical employees at the New Philadelphia Municipal Building work Mondays through Fridays. Work days consist of eight and one-half hours - 8:00 a.m. to 4:30 p.m. - However, included within this time frame is a one-half hour unpaid and unscheduled, lunch break, and two paid breaks, each of fifteen minutes duration, one as scheduled by the Supervisor during the first four hours of scheduled work, and the other similarly scheduled during the second four hours of scheduled work.

Employees are required to sign-in when they report for work and to sign-out at the end of their work day.

The Union's Proposal.

The Union proposes to adjust the Clerical employee's shifts so that the work day would begin at 7:30 a.m. and end at 4:30 p.m., and include a specific, scheduled unpaid lunch hour, and two fifteen minute paid breaks. It seeks to bar the introduction of time clocks.

In support of its proposal, the Union complains that often the lunch hours have been entirely withheld, or employees required to work through break times as a result of the need to provide adequate coverage when employee absences significantly reduce staffing levels.

The City's Proposal.

The City notes that historically Municipal Offices have been open from 8:00 a.m. to 4:30 p.m., and that employees have

normally received a full one-half hour lunch period and two fifteen minute breaks.

According to the City, the holding-over of employees because of staffing needs so that they are prevented from taking their lunch break happens rarely and is not "much of a problem." Finally, the City notes that the scheduling of work hours is a permissive, not mandatory, subject of bargaining.

As to the proposed introduction of time clocks, the City seeks to install them because it is necessary to maintain accurate time records to comply with the Fair Labor Standard Act requirements, and that, in any event, the requirement of clocking-in and out is only a permissive and not mandatory subject of bargaining.

FINDINGS AND RECOMMENDATIONS

The establishment of employee work schedules with designated starting and quitting times is typically a managerial function. Determination of when it is appropriate to open and close municipal offices for the convenience of the public is best left to the discretion of the City Administration.

Moreover, the Fact-Finder recognizes that absences because of illness or other circumstances are unpredictable, and the City's ability to render essential services can be compromised unless the lunch and rest period schedules of attending employees may be adjusted to assure adequate coverage. Therefore, the Fact-Finder believes that it is best to leave the scheduling of the rest breaks and the unpaid

lunch period to the discretion of the Employer through its designated Supervisors.

Time clocks are an efficient and effective method of determining employees punctuality, and assuring that they observe their scheduled hours of work.

Accordingly, the Fact-Finder does not believe the Union's proposal to prohibit the use of time clocks has merit.

For the foregoing reasons the Fact-Finder finds appropriate and recommends that the parties adopt as Article 19 of their Contract the following:

"ARTICLE 19 HOURS OF WORK.

"Section 1. the work week shall be Monday through Friday. The work day shall consist of 8 1/2 hours and shall include two (2) rest breaks, each of fifteen (15) minutes duration. The lunch period shall be one-half (1/2) hour unpaid as scheduled by the employer.

"Section 2. Each employee shall clock in and clock out for those times specified by the employer.

"Section 3. The hours of work for employees shall be scheduled by the employer."

VI. Length of Probationary Period.

Current Status.

Under Ordinance No. 39-97 full-time, non-Bargaining employees hired after January 1, 1997 serve a one year probationary period.

The Union's Proposal.

The Union seeks to reduce the probationary period which it argues is excessively long. The Service Employees'

Contract requires only a ninety day probationary period. Probationary employees can be dismissed without cause, and are not entitled to utilize the grievance procedure.

The City's Proposal.

The City maintains that ninety days is insufficient to determine the work ethic of newly hired employees. It notes that non-Bargaining Unit employees continue to serve a one year probationary period, as do Police and Firefighters.

FINDINGS AND RECOMMENDATIONS

The City's screening of applicants for employment is sufficiently rigorous so that relatively few fail to successfully complete their probationary period. The Fact-Finder believes that one year is an unreasonably long period of time to require Clerical employees to demonstrate their skills and work habits. Since the Service Employees in another unit represented by AFSCME are required to serve only a ninety day probationary period, the Clerical unit ought not to be treated differently. Accordingly, the Fact-Finder finds appropriate and recommends that the parties adopt as Article 14 of their Contract to following:

"ARTICLE 14 PROBATIONARY PERIOD.

"New employees shall be considered as probationary employees for the first 90 days of their employment. During their probationary period, employees may be discharged at the will of the Employer and such discharge shall not be subject to the grievance and arbitration procedure provided in this Agreement."

VII. Uniform Allowances.

Current Status.

The City requires all of its employees to wear a "uniform" which it provides, consisting of a short sleeve golf shirt with a departmental insignia on the sleeve.

The Union's Proposal.

The Union seeks a \$200.00 a year clothing allowance to be used in an appropriate manner at the discretion of the individual employee.

The City's Proposal.

The City rejects payment of any allowance to these Bargaining Unit employees since they are not required to purchase the required shirts, and should not be granted a benefit offered only to the Police, Firefighters and Nurses who have specialized uniform requirements and are required to pay for replacements out of their own pocket.

FINDINGS AND RECOMMENDATIONS

The City's quasi-dress code is intended to permit ready identification of City employees and their Departments and promote esprit de corps. Although the shirts in question do not bear designer labels, there does not appear to be any serious objection to the wearing of this apparel, assuming the offices are appropriately heated and cooled as weather conditions may dictate.

The Fact-Finder cannot find any reason to provide a clothing allowance to the Union since they are otherwise not required to provide special dress items and are no more in

need of any other employee, (Police, Firefighters and Nurses excepted, because of their special requirements).

Accordingly, the Fact-Finder finds appropriate and recommends that the parties adopt as Article 38 of their Contract the following:

"ARTICLE 38 CLOTHING:

"Section 1. If the employer requires a specific item of clothing, the employer will furnish sufficient quantities to each employee without cost to the employee."

VIII. Vacation Allowances.

Current Status.

Under Ordinance No. 39-97 employees are subject to a two-tier paid vacation system. All full-time non-bargaining employees hired on and after January 1, 1997 are entitled to vacation time in accordance with the following schedule: Employees who have completed one year of service, but less than seven, receive two weeks vacation each year. Employees completing at least seven but less than fifteen years, receive three weeks. Employees having completed at least fifteen years but less than twenty-five, are entitled to four weeks. Employees having at least twenty-five years of service receive five weeks.

Full-time employees hired prior to January 1, 1997 are subject to a more liberal vacation schedule: Employees having completed at least one year of service, but less than five years, receive two weeks vacation annually. Employees having completed five years service but less than ten, receive three

weeks. Employees having completed at least ten years, but less than fifteen years, receive four weeks paid. Employees having completed at least fifteen years of service, receive five weeks.

The Union's Proposal.

The Union seeks to allow all part-time employees who are on the payroll as of January 1, 2000 and who thereafter become full-time employees, to use the date of their initial part-time employment serve as their service seniority date for purposes of vacation entitlements. The Union further seeks to allow all full-time employees on the payroll as of January 1, 2000 and who were formerly part-time employees, to receive credit for their earlier part-time service so that their date of hire as a part-time employee would likewise become their anniversary date for purposes of calculating their vacation entitlements.

The City's Proposal.

The City recommends continuance of the two-tier vacation schedule based upon the Ordinance's effective date. It notes that the Contract with the Service Employees is similar to the Ordinance except that the dividing line date between the tiers was changed to January 1, 1997, the date of their first Contract.

FINDINGS AND RECOMMENDATIONS

None of the other regular full-time employees of the City receive credit for any former part-time service for purposes of computation of their vacation entitlements. The Fact-

Finder does not see any special merit in providing the Clerical employees with this unique benefit. However, he does understand that some present members of the Unit were hired on a full-time basis after August 11, 1997, the effective date of the Ordinance, and he will therefore recommend that the dividing line between the two-tier system for Bargaining Unit be advanced to August 11, 1999.

Consequently, the Fact-Finder finds appropriate and recommends the parties adopt as Article 25 the following:

"ARTICLE 25 VACATIONS:

"Section 1. Any full time member hired on or after August 11, 1999 will earn vacations under the following schedule.

"A) Members who on the anniversary date of their employment with the city who have service with at least one (1) year but less than seven (7) years shall receive two (2) weeks vacation with pay.

"B) Members who on the anniversary date of their employment with the city who have service with at least seven (7) years but less than fifteen (15) years shall receive three (3) weeks vacation with pay.

"C) Members who on the anniversary date of their employment with the city who have service with at least fifteen (15) years but less than twenty (20) years shall receive four (4) weeks vacation with pay.

"D) Members who on the anniversary date of their employment with the city who have service with at least twenty (20) years shall receive five (5) weeks vacation with pay.

"Section 2. Any full time members hired prior to August 11, 1999 will earn vacations under the following schedule.

"A) Members who on the anniversary date of their employment with the city who have service with at least one (1) year but less than five (5) years shall receive two (2) weeks vacation with pay.

"B) Members who on the anniversary date of their employment with the city who have service with at least five (5) years but less than ten (10) years shall receive three (3) weeks vacation with pay.

"C) Members who on the anniversary date of their employment with the city who have service with at least ten (10) years but less than fifteen (15) years shall receive four (4) weeks vacation with pay.

"D) Members who on the anniversary date of their employment with the city who have service with at least fifteen (15) years shall receive five (5) weeks vacation with pay.

"Section 3. Days specified as holidays shall not be charged to a member's vacation leave. A member's annual vacation leave must be used within one (1) year from the anniversary date prior to the next anniversary date or the unused balance shall be, forfeited. There shall be no payment of the accrued but unused vacation leave except as specified by Ordinance 433-84.

"Section 4. In establishing a member's eligibility for vacation, the Employer will count all service in accordance with Section 9.44 O.R.C..

"Section 5. Vacation periods will be permitted at any time from January 1st of each year through December 31st. If there is a conflict between members of the bargaining unit, the employee whose seniority is superior will be given the vacation period automatically unless he or she defers to the member junior in seniority. The supervisor of the Department will have the power to refuse to grant the vacation request or to postpone it, should an emergency arise which the supervisor feels would necessitate the presence of the requesting member. All requests for vacation must be submitted to the Department

supervisor within thirty (30) days from the date such vacation would commence. If a vacation request is not submitted timely, the supervisor may deny the request.

"Section 6. Members classified as part-time will not receive benefits described under Article 25."

VIX. Meal Allowances.

Current Status.

Under the existing City Ordinance, employees receive \$22.00 per day for meals, without being subject to specific dollar limits per meal. The Ordinance also offers reimbursement for lodging expense of up to \$95.00 per day. Both parties agree that no change is required in this latter allowance.

The Union's Proposal.

The Union request that the provision of the Ordinance be retained and incorporated into their Collective Bargaining Agreement.

The City's Proposal.

The City would increase the total amount of meal allowance from \$22.00 to \$24.00. However, each of the three meals would be subject to a maximum reimbursement of \$8.00.

FINDINGS AND RECOMMENDATIONS

The Fact-Finder sees no virtue in providing an equal dollar amount for breakfast, lunch and dinner as the City proposes. Normally, breakfast is the least expensive meal of the day, while dinner is normally the most expensive, and can cost considerably more than \$8.00 even at a "family" restaurant.

Since the Union does not request any more than its members presently receive, the Fact-Finder finds appropriate and recommends the parties adopt as Article 31 of their Contract the following:

"ARTICLE 31 MEAL ALLOWANCE/OFF JOB SITE:

"Section 1. When an employee is authorized to be away from his or her work site through a meal period, while engaged in the performance of the job, the employee shall be reimbursed a maximum of twenty-two dollars (\$22.00) per day for meals and ninety-five dollars (\$95.00) per day for hotel expense."

X. Promotion Of Clerk Classified Employees To The Data Processing Clerk Classification.

Current Status.

Three members of the Bargaining Unit - Debra Pearch, Maureen Wenger and Amy Metcalf - who are presently classified as Clerks, seek to be promoted to the classification of Data Processing Clerk.

The Union's Proposal.

The Union presented summaries of the general duties of each of the classified Clerks to demonstrate that they perform duties which are indistinguishable from those of the Data Processing Clerk classification, and hence, that they ought to be promoted to that classification.

Thus, Ms. Amy Metcalf, currently serving as Administrative Assistant to the Service Director, but classified as a Clerk I, handles a variety of monthly billings and vouchers for a number of special project funds, assembles

payrolls and prepares a series of end-of-the-month, special project and other periodic reports.

Ms. Debbie Pearch, a Clerk 3, and Ms. Maureen Wenger a Clerk 1, both of whom are assigned to the Water Office, prepare monthly reports on delinquent final accounts, submit weekend and monthly reports to the Auditor, and collect and process various fees and other payments.

The services performed by these employees are quite similar to those performed by Stacie Heck, a Data Processing Clerk who is also assigned to the Water Office.

The three Clerks also perform services typically rendered by other Data Processing Clerks, such as Judy Baker. Ms. Baker receives cash, checks and other negotiable instruments, reconciles accounts on a daily basis, types records including accounting financial statements, and prepares a variety of reports.

The City's Proposal.

The City objects to the reclassification on the grounds there is lacking on the record substantial evidence that the employees qualify for the advancement.

FINDINGS AND RECOMMENDATIONS

There is presently no official job description for the Clerk position. On the other hand, a statement of the duties and requirements of the Data Processing Clerk position is available and provides:

"REQUIREMENTS OF THE POSITION: Working
knowledge of clerical practices and methods

used in keeping financial accounts and records, and of office terminology, procedures, routines, and equipment including computer and word-processor operations. Strong knowledge of business math and good command of the English language. The ability to write legibly and to communicate will with people. Clerical aptitude. An ongoing knowledge of local, state, and federal tax laws.

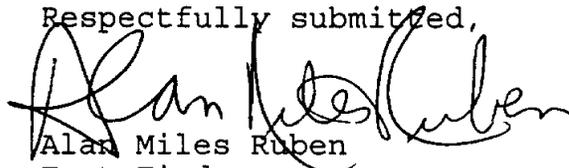
"GENERAL STATEMENT OF DUTIES: This position shall include the performance of clerical tasks involved in keeping of financial accounts and records. In addition to related work such as meeting the public and other duties as required, there shall be specific performances in the areas of account keeping, cashiering, billing, posting, and computer operation."

In light of the testimony of the incumbents in both the Data Processing Clerk and Clerk positions, and the supporting documentation they offered, the Fact-Finder believes that the three Clerk classified employees are entitled to be re-classified into the Data Processing Clerk position.

Accordingly, the Fact-Finder finds appropriate and recommends that Ms. Debra Pearch, Ms. Amy Metcalf and Ms. Maureen Wenger be upgraded from their current Clerk classification to the Data Processing Clerk classification, retroactively effective as of January 1, 2000.

Findings and Recommendations issued at Cleveland, Ohio this 9th day of February, 2000.

Respectfully submitted,


Alan Miles Ruben
Fact-Finder

AMR:ljj