

STATE EMPLOYMENT
RELATIONS
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IN THE MATTER OF FACT-FINDING PROCEEDING

BETWEEN

CITY OF WARREN	(Case No:	99-MED-09-0820
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and	(
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)		
AFSCME, Ohio Council 8	(Hearing Date:	January 19, 2000
Local 74)		
	(Findings and Recommendations:	
)		February 8, 2000
	(
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	(

Representing the City:	Gary C. Cicero Director of Human Resources
Representing the Union:	Mark T. Carlson Council Representative

William J. Miller, Jr.
Fact Finder

SUBMISSION

This matter concerns fact-finding proceedings between the City of Warren (hereafter referred to as the "Employer") and AFSCME Ohio Council 8, Local 74 (hereafter referred to as the "Union"). The State Employment Relations Board (SERB) duly appointed William J. Miller, Jr. as Fact Finder in this matter. The parties agreed to extend the submission of this report until February 8, 2000.

The Fact Finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law, and the rules and regulations of the State Employment Relations Board, as amended. Consideration was given to criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board. The Employer and the Union previously engaged in the collective bargaining process for an extensive period of time before the appointment of a Fact Finder. This Fact Finder had several discussions with the parties prior to January 19, 2000 and on January 19, 2000 attempted to mediate the unresolved issues. Mediation was unsuccessful, and the following issues were considered at the Fact Finding Hearing on January 19, 2000:

1. Posting of Job Openings
2. Overtime
3. Exemplary Attendance Award Day
4. Service Connected Injury
5. Rates of Pay
6. Attainment of CL 2000 License or Equivalent
7. Shift Differential
8. Hazardous Pay
9. Back Flow Certification
10. CDL Fees and Renewal Fees
11. Longevity
12. Severance Pay
13. Health Care Benefits
14. Wages

1. POSTING OF JOB OPENINGS

It is the position of the Union that it is seeking a modification of the language found in Section 15.01 (c) of the current agreement. Presently, the language provides that job bids be awarded to the most qualified senior employee based on department seniority. The Union proposes that this section be modified to read as follows:

1. The most senior, qualified employee within the affected department,

based upon the minimum qualifications of the job description.

2. The most senior qualified employee City wide, based upon the minimum qualifications of the job description.

The Union points out that the employer promotes the employee considered to be the most qualified to perform the job in question. It is the position of the Union that the approach taken by the City is arbitrary and does not always give the senior employee the opportunity to work the position in question. This is due to the fact that workups of less than forty hours worked in a specific week by an employee are not considered by the City when bids are awarded. The Union notes that in certain circumstances senior employees do not elect to work short term positions and as a result, the senior employees are deprived of an opportunity to fill vacant job positions.

It is the position of the City that the Union has been unable to establish that any specific employee has been harmed and that senior employees have had the opportunity to accept positions that have been posted for bid. Furthermore, it is the position of the City that it has accommodated employees who have not accepted positions on a day-to-day basis and that such employees have had the opportunity to accept vacant positions.

FINDINGS AND RECOMMENDATIONS

After carefully considering the contentions and positions of the parties, it becomes readily apparent that the primary objective of the City in filling posted vacancies is to have qualified employees working such vacancies. The Union on the other hand, while recognizing the need of the City to have qualified employees, also believes it is necessary to utilize seniority when filling vacancies. On the basis of these positions, it is recommended that Article 15, Section 15.01 (c) read as follows:

All applications timely filed shall be reviewed by the City and the job will be awarded within five (5) working days. The job will be awarded in accordance with the following preference scheduled:

1. Senior qualified employee based on department seniority of employees within the affected department;
2. Senior qualified employee within the bargaining unit based on City-wide seniority.

If qualifications are relatively equal, the job will be awarded to the most senior employee.

The City further agrees to post within ten (10) working days after the closing of the bid period showing the individual's name that was appointed or if no individual was appointed. Downward or lateral moves shall be limited to one (1) per year per bargaining unit member.

2. OVERTIME

It is the position of the Union that this issue deals with the amount of compensatory time an employee may accumulate in lieu of cash payment for overtime. The Union would note that the present language permits the accumulation of 180 hours (120 hours actually worked) of compensatory time. The Union seeks to increase this amount to 240 hours (160 hours actually worked.) The Union contends that for the employer to accumulate compensatory time in lieu of a cash payment for overtime actually saves the employer money. This is due to the fact that employees electing to receive compensatory time receive fewer dollars than those who receive cash. This fact reduces the employers liability for various payroll taxes such as capital PERS payments and worker's compensation payments.

The position of the City regarding this specific issue is that the present language has worked without difficulty and the Union has failed to submit any specific reason, which would require that a change be made in the existing language.

FINDINGS AND RECOMMENDATIONS

Upon considering the record evidence and testimony regarding this specific issue, it is my considered opinion that the position being taken by the Union in this circumstance is reasonable and would not cause any specific harm to the City. I would therefore recommend that the language of Article 19, Section 19.01 G, read as follows:

Any and all overtime provided by this article shall be calculated and paid as part of the pay period worked, except that members may be allowed to accumulate a maximum of two hundred and forty (240) hours of compensatory time (160 hours actually worked) in lieu of paid overtime. this compensatory time shall be accumulated at one and one half (1-1/2) hours for each one (1) hour worked and shall not be allowed to be converted to cash for any reason. It may only be used as time off.

3. EXEMPLARY ATTENDANCE AWARD DAY

It is the position of the Union that it is seeking to modify Section E of Article 28 of the Agreement so that such Article will include additional bereavement days to be taken off for bereavement purposes and that such additional days will not count against an employee's perfect attendance.

Also, the Union is requesting that Section F of Article 28 be amended so that up to ten days of time lost due to a work related illness or injury which is compensable by worker's compensation shall not be considered a penalty against the employee's record of perfect attendance.

The City has reviewed the request of the Union regarding the specific changes requested. The City points out that the appropriate language in question has worked without problem for a considerable period of time and the City does not believe that a change would be appropriate as has been requested by the Union. The City would also note that it has a concern for what the Union perceives as a work related illness. In summary, it is the position of the City that it is unnecessary to make the changes that have been requested by the Union.

FINDINGS AND RECOMMENDATIONS

Upon considering the positions of the parties, it is my opinion that the change being requested by the Union as such change relates to not counting additional bereavement days taken by employees for remote relatives is not an unreasonable request. Therefore, it is my opinion that such change is acceptable and it is my recommendation that additional bereavement days taken for remote relatives not be used for the purpose of determining perfect attendance.

Regarding the request of the Union that up to ten days of time lost due to a work related injury not be counted as a penalty against an employee's perfect attendance, it is my opinion that such request is appropriate and the following language should be added to Article 28, Section F of the Agreement:

Up to 10 days of time lost due to a work related injury, which is compensable by Worker's Compensation, shall not be considered a penalty against the employee's record of perfect attendance.

4. SERVICE CONNECTED INJURY

It is the position of the Union that under the terms of the existing agreement, when an employee is receiving benefits from the City for a service connected disability in lieu of Worker's Compensation, the Employer requires that the employee have a balance of 80 hours sick leave and a balance of 80 vacation hours in order to accrue sick and vacation time when receiving this benefit. The Union proposes modifications to the language which would provide that the employee have a balance of 120 hours of sick leave, but such balance would be waived if the employee has no occurrences under the City's attendance policy for six months prior to the time of the request for benefit. The Union would also request that newly hired employees be exempted from these provisions for a period of two years from the date the employee is initially hired. The Union also contends that there should be no provision for a vacation balance, as vacation is a benefit which is intended to be used by employees. Finally, the Union requests that Article 29, Section 29.01 be modified by deleting paragraph 2 of this section. The Union argues that this paragraph provides for earning less sick leave per pay period for the first five years of employment. The Union believes it would be more appropriate to provide that all employees earn the same amount of sick leave.

The City takes the position that the language in existence in Section 29 and Section 31 has worked without problem and need not be altered. While the City recognizes the benefit of extending the hours for sick leave balance, it does not agree that there is any other benefit to the City to change the language that is currently in existence in the Agreement. Furthermore, the City argues that the language related to new employees was considered as a quid pro quo for other changes that the Union sought during prior negotiations.

FINDINGS AND RECOMMENDATIONS

Upon carefully considering the positions of the parties, it is my considered opinion that while both the Union and the Employer recognize the benefit to certain changes regarding the language at issue, that a reasonable approach to the requests of the parties would be most appropriate in this specific circumstance. While I do believe it would be in the interest of the City to require additional hours of sick leave in order for employees to accrue sick and vacation time while receiving the applicable benefit, I also believe that it is not reasonable to require that employees have a balance regarding their vacation hours. As the Union has appropriately pointed out, vacation benefit has been earned by the employees and the employees have a right to use such benefit. Regarding the request of the Union to enhance the benefit of the newer employees, it is my recommendation that this benefit not be altered at this time. I would therefore propose that the language of Article 31.02 D read as follows:

D. During the lost time due to injury for which the employee is receiving pay under the terms of this Article from the City, the employee who does not have one hundred twenty (120) hours of sick leave balance on their previous pay stub shall not accumulate sick leave. During the lost time due to injury for which the employee is receiving pay under the terms of this Article from the City, the employee shall accumulate vacation hours for this period of time, the City will continue to make the deductions(excluding taxes) from the employee's pay which were made prior to the injury.

5. RATES OF PAY

The Union proposes to set the prevailing rate for the following Law Department classifications:

<u>Classification</u>	<u>Proposed Rate</u>
Paralegal Assistant	\$11.79 per hour
Assistant Legal Secretary	\$13.20 per hour
Legal Secretary	\$13.79 per hour
Executive Legal Secretary II	\$17.10 per hour

It is the position of the Union to make such change would represent no wage increase and makes the "personal rates" arbitrarily assigned by the Employer the contractual prevailing rate for the classifications.

With respect to the Water Treatment Plant - Floating Operators, the Union proposes that these two individuals be compensated at the "Competent Person" rate for all hours. This classification is essentially responsible for plant and the additional amount of \$0.30 per hour should be added to the rate in the same manner as the Plant Maintenance Mechanic 3 rate of pay.

The City does not have an objection to pay the rates requested by the Union regarding the Law Department employees. However, regarding the Floating Operators, it is the contention of the City that there is no basis to this request of the Union as Floating Operators will not be required to perform the specific duties as are performed by the Plant Maintenance Mechanic 3 positions.

FINDINGS AND RECOMMENDATIONS

It is recommended that the rates which are proposed for Law Department employees be installed as has been requested by the Union. Regarding the Floating Operators in the Water Treatment Plant, there would be no basis to pay the "competent person" rate as the work of Plant Maintenance Mechanic 3 will not be assigned to Floating Operators. This understanding should be communicated to all concerned.

6. ATTAINMENT OF CL 2000 LICENSE OR EQUIVALENT

The Union purposes to change the language in Section 21.03 C to read as follows:

Any employee who attains a CL 2000 license or its equivalent (i.e. a certificate of approval for bacterial analysis of potable water and certificate of approval for chemical analysis of potable water) shall receive \$0.25 in addition to the respective regular rate of pay."

It is the contention of the Union that this provision would pay the Assistant Chemist in the Water Department the same amount as other Water Department employees who hold the same license. The Chemist currently receives \$0.14 per hour for the same license.

It is the contention of the City that the position of Assistant Chemist has always performed the test at issue and under existing circumstances is now required to perform the test more frequently. The City position in this regard is that there should be no adjustment in the classification for this specific position.

FINDINGS AND RECOMMENDATIONS

Upon carefully considering the allegations and contentions of the parties related to this specific issue, it appears undisputed that the position of Assistant Chemist has in the past performed the duties and responsibilities related to the test in question. For whatever reason, the parties had seen fit to provide a specific adjustment for the Assistant Chemist position. In my considered opinion, there has been no compelling evidence submitted which would support a recommendation to require the City to pay additional monies to the Assistant Chemist on the basis of the evidence which has been provided. It is my recommendation that the City's position regarding this issue be maintained.

7. SHIFT DIFFERENTIAL

It is the position of the Union that the current shift differential of \$0.35 per hour (afternoon) be increased to \$0.45 per hour. For the midnight shift the Union requests that shift differential be increased from \$0.40 per hour to \$0.50 per hour. It is contended by the Union that such an adjustment in shift differential will provide parity with the shift differential which is being paid to Police Officers. The Union argues further that of the 224 employees of the AFSCME Bargaining Unit, only 20% are funded by general fund revenues and the remaining 80% are funded through enterprise fund sources. Furthermore, it is pointed out by the Union that not many employees would be entitled to receive shift differential because not many employees are scheduled on the afternoon and midnight shifts. Because of this negligible effect on the City's costs, the Union would request that shift differential be changed as requested.

The City contends there is no basis for altering the shift differential as is requested by the Union. It is the position of the City that the shift differential which is provided to employees at the present time is fair and appropriate.

FINDINGS AND RECOMMENDATIONS

Upon considering the request of the Union, it becomes readily apparent that there would not be a significant cost impact upon the City if the request of the Union would be granted. In light of the position which has been submitted by the Union, it is my determination that the Union's request be granted and that shift differential be adjusted so as to provide an allowance of \$0.40 per hour for the afternoon shift and \$0.50 per hour for the midnight shift.

8. HAZARDOUS PAY

The Union requests that Section 21.06 of the Agreement be amended so as to increase hazardous pay to \$0.23 per hour for all hours worked and to add the classifications of Water Serviceman 2 and Building Maintenance Man to be included within the scope of this hazardous pay provisions of the Agreement. The basis for this request is one of parity and would have no impact upon the general fund because the employees covered by this provision are paid from enterprise fund sources.

The City contends there is no job title of Building Maintenance Man. Furthermore, the City sees no basis for altering the amount of hazardous pay which is provided under the present agreement language.

FINDINGS AND RECOMMENDATIONS

Based upon consideration of the arguments which have been presented, it is my belief that it would be appropriate to increase the amount of hazardous pay to \$0.23 per hour for the positions which are presently defined in the Agreement. Regarding the request of the Union to add several positions to this hazardous pay provision, it is my opinion that the Union has not clearly defined a reasonable basis for providing hazardous pay to positions that are not clearly defined and which do not appear to be hazardous as other positions which are defined in the applicable contract language as found in Section 21.06 of the Agreement.

9. BACK FLOW CERTIFICATION

At the outset, Union sought a payment of \$55.00 per month added to Section 21.14 of the Agreement in cases where it was necessary for employees to be certified for backflow.

During the discussion of this issue, the City indicated that the back flow license is not a requirement and that the employees performing this work are doing it on their own and such matter is not a requirement. After further discussion related to this issue, the Union indicated that it was withdrawing this issue.

FINDINGS AND RECOMMENDATIONS

In light of the Union's withdrawal of this issue, there is no need for any specific recommendation.

10. CDL FEES AND RENEWAL FEES

It is the position of the Union that language needs to be added to Section 21.15 of the Agreement which would provide for payment and/or reimbursement for employees who are required to have a Commercial Driver's License and reimbursement for the difference in renewal amounts between a regular State Operator's license. It is contended by the Union that this benefit is common in Cities and for other government employees throughout the area.

The City pointed out that presently the positions of Laborer 1 and Laborer 2 are compensated for initial licenses and renewals, but this does not extend to other positions. The City does not see any reason to extend such benefit to other positions.

FINDINGS AND RECOMMENDATIONS

Upon carefully considering this specific issue, it is my considered opinion that in circumstances where the City requires that employees have a Commercial Driver's License in order to perform their specific work functions, that the City should provide for such reimbursement. Accordingly, it is my recommendation that the request of the Union in this instance be followed by the parties.

11. LONGEVITY

The Union requests that longevity be increased from \$4.50 per month, per year of service to \$6.00 per month, per year of service. The Union argues this is an issue of parity because Police Officers receive \$5.54 and Firefighters receive \$5.54. Furthermore, the Union contends that non-bargaining employees receive \$7.00. The Union argues that granting this request will have little if any impact upon the general fund.

The City contends that there is no basis for increasing the longevity amount in the manner requested by the Union. The City believes that the longevity amount which is presently provided for AFSCME members is fair and appropriate.

FINDINGS AND RECOMMENDATIONS

It is my recommendation based upon the positions of the parties that it would be appropriate in this circumstance to raise the longevity amount for bargaining unit members to \$5.54.

12. SEVERANCE PAY

It is the Union's position that it seeks to modify Section 26.02 of the Agreement so as to mirror Article 17 of the Warren Management Association Agreement. That is, to increase the payment amount to 98.5% of the employee's regular rate of pay and to have the conversion amounts deducted from existing sick and vacation balances first. The Union believes this to be a revenue neutral proposal.

The City contends that there is no basis for providing severance pay differently as requested by the Union because there is no specific problem in this instance. The City believes the existing method of calculating severance allowance to be fair and equitable.

FINDINGS AND RECOMMENDATIONS

I have carefully reviewed the positions of the parties related to this specific issue. Upon making such review at the hearing and subsequent to the hearing, upon receipt of additional information submitted by the parties, it is my considered opinion that there still needs to be further review of this matter between the parties for the determination of the specific items that may be at issue. It is my recommendation that this item remain unchanged at this time, but that the parties meet and discuss this issue at a later date for the purpose of finding a solution to the severance issue raised by the Union.

13. HEALTH CARE BENEFITS

It is the position of the Union that the City provide the "lasex" corrective eye surgery to members of the bargaining unit. According to the Union, this benefit is already available to members of the Police and Firefighters and should be provided to the members of this bargaining unit.

The City stated that it would be willing to treat this benefit for members of this bargaining unit in the same manner as it does for employees in the Police and Firefighters bargaining units. The City points out that this is done on the basis of meeting the applicable requirements of the Americans with Disabilities Act.

FINDINGS AND RECOMMENDATIONS

It is recommended that this lasex benefit be provided to members of this bargaining unit in the same manner that such benefit is provided to members of the Police and Firefighter bargaining units in order to comply with the Americans with Disabilities Act.

14. WAGES

The Union proposes an agreement of three years duration with the following wage increases:

Effective 1/1/2000	0%
Effective 1/1/2001	A "me too" clause with Police and Firefighters to include any increase awarded in year 2000.

Effective 1/1/2002

A "me too" clause with Police and Firefighters to include any increase awarded in year 2000.

Alternatively, the Union proposes the following increases:

Effective 1/1/2000	0%
Effective 1/1/2001	4%
Effective 1/1/2002	5%

The City would offer a one year contract with no wage increase.

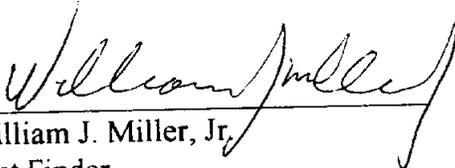
FINDINGS AND RECOMMENDATIONS

Upon carefully considering the facts and documentation submitted by the parties, it is my recommendation that wages for a three year contract be as follows:

Effective 1/1/2000	0%
Effective 1/1/2001	4%
Effective 1/1/2002	5%

CONCLUSION

In conclusion, this fact-finder submits his findings and recommendations as set forth herein.


William J. Miller, Jr.
Fact Finder

February 8, 2000