

In the Matter of Fact-Finding Between City of Barberton and AFSCME Local 265 and Ohio Council #8, Case No. 05-MED-11-1275, September 14, 2005.

STATE OF OHIO

STATE EMPLOYMENT REALTIONS BOARD

In the Matter of Fact-Finding Between :
CITY OF BARBERTON, :
Employer :
and :
AFSCME Local 265 Local 265 :
and Ohio Council #8, AFL-CIO :
Union :

Case No: 05-MED-11-1275

STATE EMPLOYMENT
RELATIONS BOARD
2005 SEP 16 A 11:45

FACT FINDING AND RECOMMENDATIONS

Michael D. McDowell, Esq., Fact-Finder

APPEARANCES

For the City of Barberton:

Mr. Nicholas Codrea
Law Firm of Robert J. Tscholl, Esq.
220 Market Avenue, South
Suite 1120
Canton, OH 44702

For AFSCME Local 265 and Ohio Council #8, AFL-CIO

Mr. Stevan P. Pickard
Staff Representative
AFSCME, Ohio Council 8
1145 Massillon Road
Akron, OH 44306

SUBMISSION

The undersigned was appointed Fact-Finder in this dispute on June 9, 2005. There is a collective bargaining agreement in full force and effect between the City of Barberton (City) and AFSCME Local 265 and Ohio Council #8, AFL-CIO (Union), which agreement is hereinafter referred to as the "CBA." The three year CBA become effective on December 1, 2003, and the term of the CBA ends on November 30, 2006. The CBA contains a wage freeze in the first year of the contract, with a Wage Reopener providing for negotiations on or after December, 2004. The bargaining unit consists of approximately 80 full time employees.

The parties negotiated the Wage Reopener question. They have had several meetings but the parties have been unable to resolve the Wage Reopener issue.

The parties then agreed to a Fact-Finding Hearing on August 16, 2005, which was held in a conference room at the City Hall in Barberton, Ohio. The parties agreed to extend the time periods to and including the issuance of the Fact Finding Recommendation as provided under the Ohio Administrative Code Rule 4117.260.

In addition to the Representatives and the Fact-Finder, the following individuals were present at the hearing:

For the City:

Mr. Elwood Palmer
Director of Public Safety
City of Barberton Office
576 W. Park Avenue Office
Barberton, OH 44203

For the Union:

Mr. Louis Maholic
Staff Representative
AFSCME, Ohio Council 8
1145 Massillon Road
Akron, OH 44306

Mr. Eddie Lawson
President, AFSCME Local 265

Mr. Burr Brown
AFSCME Local 265

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The parties were not able to agree on the Wage Reopener issue. Therefore, the Fact-Finder heard evidence submitted by the parties on that issue.

In rendering this Award, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in O.R.C. Sec. 4117.14(C)(4)(e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

- (1) Past collectively bargained agreements 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) 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.

ISSUE IN CONTENTION

Article 16 – WAGE RATES and COMPENSATION at Section 16.1 Hourly Rates

Employer position: The City believes that the wage freeze should continue for for the second year of the CBA year until December 1, 2005, when in the last year of the CBA, the bargaining unit members should receive a two percent (2%) General Wage Increase to all classifications at all Longevity steps.

Also, the City offers a new Wage Reopener clause which is the same as that contained in the recent collective bargaining agreement with the IAFF in an agreed settlement in April, 2005, without Fact Finding, effective January 1, 2005, to December 31, 2007. The language is proposed to read as follows:

“If the financial status of the City warrants, both parties may agree to a contract re-opener for Article 16, Section 16.1 in terms of negotiated wage increases. This section will cease to have effect upon the expiration of this Agreement. (November 30, 2006)”

Further, the City offered a revised ARTICLE 29 – Severance Benefit.

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Union Position: The Union seeks a 3.5% General Wage Increase retroactive to December 1, 2004 and then an additional 4% General Wage Increase effective December 1, 2005.

Discussion: The City argues that it can not afford a wage increase. The City did recognize the value of the bargaining unit members and offers a 2% wage increase for the last year of the contract, with a wage reopener. The City also offers what it asserts is an improved severance benefit as a manner of providing a benefit to the Union but deferring the cost of the benefit to the City. The City provided, and the Union did not contest, evidence of its poor financial health. The City presented evidence of its finances, benefit costs and labor market demographic analysis comparisons with other cities. In addition, the City provided evidence of its concerns, based on public announcements of Governor Taft, with the continuance of the current levels of Local Government Funds from the State of Ohio. These Funds supply what was termed at the hearing to be General Fund monies that are used by the City to pay the compensation of a significant number of bargaining unit members.

The Union asserts that it understands the financial concerns of the City and that since 2003 the Union has cooperated with the City, and in particular by not resisting the reduction, apparently by attrition, of the bargaining unit workforce by 18 bargaining unit members whose compensation was dependent on General Fund monies. The City does not dispute the amount of this reduction. The Union asserts that this alone provides the savings necessary to cover the requested wage increases of 3.5% and 4%, respectively, for the last two years of the CBA.

The Union also argues that the rest of the Union Employees, consisting of nearly half of the bargaining unit, are paid through what was termed at the hearing to be Enterprise Funds. The Enterprise Funds were described by the Union as self sufficient as the monies for the wage increases for these bargaining unit employees could come from raising utility rates. The City responds by saying that the utility rates have already been increased over the last three years. It also states that raising the utility rates may not provide the extra funds expected because customers make choices to cut usage, and that other factors, such as weather, impact usage.

The Union also asserts that the IAFF, although it took a wage freeze in the first year, was provided with a 2% wage increase in each of the last two years of its current contract. The Union points out that the costs of compensation for the IAFF is paid entirely out of General Fund monies. The Union also asserts that there are more benefits overall in that contract and cites contracted overtime and health plan costs. The City asserted that trade offs were made in the new contract between the City with the IAFF. This included estimates of potential savings to the City, which the City believes justifies the 2% General Wage Increase the City will provide to the IAFF in the last two years of that contract.

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With respect to the offer by the City of an enhanced severance benefit, the Union states that this would not have a significant immediate or proximate benefit to most members of the bargaining unit and may be subject to reduction in future bargaining. The Union would not object to its inclusion in the CBA but argued that this should not take the place of a General Wage Increase.

Recommendations of the Fact-Finder: A review of wage increases for comparable cities in Ohio show that the increase offered by the City is lower than most. However, as with the comparison of the CBA to the IAAF contract, I recognize that comparisons of the terms of benefits, wages and structure labor agreements of different bargaining units is beneficial but not an exact science, especially between a different type of bargaining unit. Further, there is no dispute as to the City's poor fiscal health and that fact should be considered. There is also no dispute as to the reduction over the last two years of bargaining unit employees whose compensation was paid out of the General Funds, thereby providing less expenditures for the City. Considering these and other relevant factors, the Union should be granted a 2% General Wage Increase in each of the last two years of the CBA. If the recommendation is accepted, the parties would prepare the appropriate Exhibits D1 and D2 to provide for the same as referred to in the recommended contract language. The City's proposed Wage Reopener language should be included as well. In view of the General Wage Increase recommended in the second year of the contract, no change in the severance benefits is recommended.

The new contract language should read as follows:

“Section 16.1 Hourly rates

Effective December 1, 2003, bargaining unit members shall receive wages as provided in Exhibit D.

Effective, and retroactive to, December 1, 2004, bargaining unit members shall receive wages as provided in Exhibit D1. The wage rates in Exhibit D1 reflect a two percent (2%) General Wage Increase to all classifications at all Longevity steps.

Effective December 1, 2005, bargaining unit members shall receive wages as provided in Exhibit D2. The wage rates in Exhibit D2 reflect an additional two percent (2%) General Wage Increase to all classifications at all Longevity steps.

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Section 16.2 Wage Reopener

If the financial status of the City warrants, both parties may agree to a contract reopener for Article 16, Section 16.1 in terms of negotiated wage increases. This section will cease to have effect upon the expiration of this Agreement (November 30, 2006).”

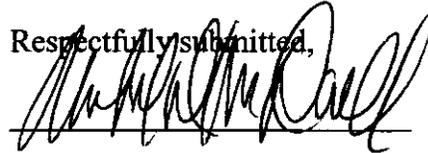
Section 16.3 Current 16.2 Longevity Steps would become 16.3 with no changes.

Section 16.4 Current 16.3 Pension Pickup/Pay Periods would become 16.4 with no changes.

Section 16.5 Current 16.4 Shift Differential would become 16.5 with no changes.

This concludes the Report and the Recommendations of the Fact Finder.

Respectfully submitted,

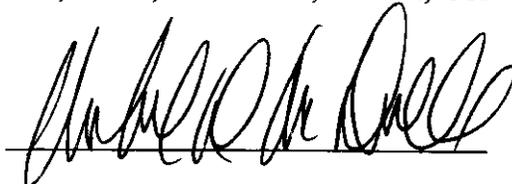


Michael D. McDowell
Fact-Finder

Pittsburgh, PA
September 14, 2005

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed this 14th day of September, 2005, by U.S. Mail, Overnight Express Mail to Mr. Stevan P. Pickard, Staff Representative, Ohio Council 8, AFSCME, 1145 Massillon Road, Akron, OH 44306-4161; Mr. Elwood Palmer, Director of Public Service, City of Barberton Office, 576 W. Park Avenue Office, Barberton, OH 44203; and Mr. Nicholas Codrea, Jr., M.A., The Law Offices of Robert J. Tscholl, Esq., 220 Market Avenue, South, Suite 1120, Canton, OH 44702.



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Fact-Finder