

FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
September 6, 2006

In the Matter of:

The City of Norwood, Ohio

and

AFSCME, Ohio Council 8, Local  
3278

05-MED-10-1273

STATE EMPLOYMENT  
RELATIONS BOARD  
2006 SEP -7 A 11: 27

REPORT AND RECOMMENDATIONS OF FACT-FINDER  
TOBIE BRAVERMAN

APPEARANCES

For the Employer:

Charles A. King, Director Labor  
Relations  
Joseph C. Geers, Director  
Service/Safety  
Tom White, Superintendent of  
Public Works

For the Union:

Kimm A. Massengill-Bernardin,  
Associate General Counsel  
Debra Garcia, Staff  
Representative  
Melissa Andler, President,  
Rebecca Frankenhoff, Steward  
DeAnne Darrah, Steward

## **INTRODUCTION**

The undersigned was selected by the parties, and duly appointed by SERB by letter dated May 25, 2006, to serve as Fact-Finder in the matter of the City of Norwood (hereinafter referred to as "Employer") and AFSCME, Ohio Council 8, Local 3278 (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until September 6, 2006. Hearing was held at Norwood, Ohio on July 26, 2006 and August 22, 2006. The Union was represented by Kimm A. Massengill-Bernadin, Associate General Council, and the City was represented by Charles A. King, Director of Labor Relations.

## **FACTUAL BACKGROUND**

The City of Norwood is a City located in Hamilton County in Southwest, Ohio with a population of approximately 21,000. The City employs approximately 200 full time employees. Among the full time employees, there are four separate bargaining units. Those include, police, fire fighters, an AFSCME bargaining unit representing the Public Works Department, and the Bargaining Unit involved here, an AFSCME bargaining unit representing dispatchers and support staff in a number of different city departments. The remainder of the City's employees are unorganized.

The AFSCME Local 3278 Bargaining Unit consists of twenty-seven full time employees. The Collective Bargaining Agreement between

the parties expired on December 31, 2005. The parties have waived any statutory claims concerning the award being effective in the following fiscal year. After a number of negotiation sessions, the parties submitted their remaining disputed bargaining issues to Fact-Finding. The parties have reached tentative agreement on matters relating to the following Articles of the Collective Bargaining Agreement: 1, 2, 6, 7, 11, 19, 20, 23, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, and Addendum 1. All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the parties' final Agreement.

The greatest factor overshadowing these negotiations is the Employer's fiscal status. The Employer has been placed in "Fiscal Watch" by the State of Ohio Local Government Services Office. Fiscal Watch indicates that the Employer is projected to incur deficits of up to twelve percent in relation to the prior year's revenues. The Employer's deficit is projected to be 6.1 million by the end of fiscal year 2006. The Employer's financial woes have been further exacerbated by the seizure of more than one million in property tax collections by the Ohio Police and Fire Pension Fund for overdue contributions owed by the Employer. As a result of its Fiscal Watch status, the Employer underwent an extensive Performance Audit conducted by the State Auditor. That Audit, dated February 23, 2006, makes a number of recommendations for return to fiscal solvency. Among the recommendations are a number which are dependent upon negotiation with the Unions representing

the Employer's various bargaining units.

The Performance Audit Report stresses a number of factors which are of significance in this Fact-Finding. It notes initially that the Employer's fiscal crisis was not initially precipitated by lack of revenue, but rather by overly generous employee wages and benefits, particularly in the police and fire bargaining units. The Audit Report further notes that wage and cost of living increases have not been distributed equitably among all employees. Rather, fire and police have received greater increases. Both are additionally over staffed, while other areas are understaffed. These conditions have clearly led to a feeling by the members of this bargaining unit that they are undervalued and underpaid. It is against this back drop that the negotiations between these parties have proceeded to Fact-Finding.

The unresolved issues are as follows:

Article 15 - Layoff and Recall

Article 21 - Terms and Conditions for Payment of Wages

Article 42 - Early Retirement Incentive

## **ISSUES**

### **ARTICLE 15 - LAYOFF AND RECALL**

Union Position: The Union proposes that the lay off language remain the same. This language has been in the Collective Bargaining Agreement since at least 1986. There has been no problem with its application and enforcement in that time. There

is simply no reason for its deletion from the Agreement.

Employer Position: The Employer proposes that Section 2 of the current lay off language be deleted. The lay off language as written requires that employees outside of the Bargaining Unit be laid off prior to lay offs within the Bargaining Unit. Pursuant to the rationale of two separate arbitration awards rendered in other jurisdictions with bargaining units represented by AFSCME, it is clear that this provision cannot be enforced since it would require an arbitrator to reach beyond the boundaries of the Collective Bargaining Agreement. It should therefore be deleted from the Agreement.

Discussion: The Employer seeks to delete Section 2 of the lay off language of the Agreement in its entirety upon the basis that its requirement that part-time, casual, probationary, temporary, seasonal or intermittent positions be abolished before laying off members of the Bargaining Unit appears to require that employees outside of the Bargaining Unit be laid off prior to Bargaining Unit members. While this may be a reasonable interpretation of the language on its face, it must be noted that the language has been included in the Agreement in its current form since 1986. There was no testimony presented at hearing that there has been any difficulty in administering the language or that it has impacted negatively upon employees either outside or within the Bargaining Unit. There simply does not appear to be any significant reason to alter the language against the will of the Union.

Recommendation: Current Language.

**ARTICLE 21 - TERMS AND CONDITIONS FOR PAYMENT OF WAGES**

Union Position: It is clear that both the fire fighter and police bargaining units have historically been granted wage and cost of living increases which far exceed the increases given to this Bargaining Unit. Further while positions have been reduced and consolidated in this Bargaining Unit, manpower has been added in fire and police. While police and fire do less work for more money, this Bargaining Unit is expected to do more with less. In recognition of the Employer's financial situation, the Union proposes a zero percent increase in both wages and cost of living adjustment for 2006. For 2007 and 2008, it proposes cost of living adjustments based upon the Bureau of Labor Statistics published Consumer Price Index figures for each of those years. In addition, the Union proposes a contingent wage increase for the years 2007 and 2008 which would result in a 1% wage increase in each of those years if earnings tax revenues increase by 10% over the prior year's earnings tax collections. Because of the Employer's past inequities in granting wage and cost of living increases, the Union additionally proposes a parity provision which provides that if higher percentage wage increases are provided to any other bargaining units, this Union will receive an equal increase.

Employer Position: The Employer proposes a wage increases in the amount of 0% in 2006, 1% in 2007 and 2% in 2008. This

proposal is 1% lower than the proposal for Local 914 for the reason that this Bargaining Unit received a 4% wage increase in 2005, while Local 914 received only 2%. The proposal thus attempts to rectify that inequity. When comparables are examined, this Bargaining Unit is at or near the top of wages paid in other comparable cities for the same job classifications. The Employer's financial plight is clear. Despite its financial difficulties, however, the Employer acknowledges that fairness dictates that employees receive some sort of wage increase. The Employer is striving diligently to correct its financial position. Although it has not yet begun negotiations with the fire fighter bargaining unit, it has already negotiated concessions from the police bargaining unit in an effort to rectify past inequities and to exact cost savings.

Discussion: There is no question but that the Employer's financial condition is grim. It has been placed in Fiscal Watch status. In addition to its already projected deficit, the Police and Fire Pension Fund unexpectedly determined that it would not continue to wait for back payments owed pursuant to an agreed upon re-payment schedule, and instead seized approximately one million dollars of the most recent real estate tax collection.

There is also no question but that the Employer has treated the employees in this Bargaining Unit less than equitably. While this Unit was giving concessions, the police and fire units were garnering substantial increases in both wages and personnel. The Employer made no effort to justify the difference in treatment,

and acknowledged the inequity. While this Bargaining Unit has fared better than the Local 914 Unit, it still has received increases far lower than those of police and fire.

The conundrum presented by this scenario is that while larger wage and cost of living increases would balance out the inequities, the Employer simply cannot afford those increases. It does not help that the Performance Audit notes that the Employer's fiscal difficulties have been created by overpaying employees rather than by lack of income. The fact remains that the fiscal deficit exists, and the Employer cannot regain solvency by continuing to overspend, no matter how noble the intended reasons for the overspending may be. The Union's wage and cost of living proposals would likely require expenditures beyond the Employer's capabilities at this juncture. Although the Union's wage proposal is in contingent upon increased tax revenues and upon the published Consumer Price Index, the Employer, which has a projected deficit, must be able to plan its finances with an eye toward regaining solvency. This can best be accomplished through a wage package which creates a known liability rather than a contingent one. Further, the Employer's comparable data indicates that these employees are paid well in comparison to employees within comparable jurisdictions. Wage increases must, under the circumstances, be modest, despite the fact that the equities would dictate larger increases.

The past experience of these parties, however, has been that while this Bargaining Unit is making concessions in order to help

the Employer's fiscal difficulties, the police and fire bargaining units have been granted generous increases. While the Employer earnestly submits that it will not allow this scenario to play out again, but instead will be negotiating for concessions in those two groups, the course of those negotiations is in fact entirely beyond the control of this Union and subject to many unknown factors, including the bargaining strengths of the Unions involved and the possibility of a conciliation award in which this Union will have no participation or input. The "me too" clause proposed by the Union will serve to insure that the Employer acts equitably toward this Bargaining Unit in the event that it is unable to negotiate concessions. It will also aid the Employer in its efforts to negotiate the concessions required to regain fiscal solvency.

Recommendation: Wage increases in the following amounts: 2006 - 0% 2007 - 1% 2008 - 2%. Addition of the following language: If the City grants monetary increases at a percentage rate higher than those set forth above to any other employee group (excluding AFSCME Local 914) in the form of either Cost of Living Adjustments or Wages during the term of this Agreement, each member of this Bargaining Unit shall receive a monetary increase in the same amount effective on the same date as the effective date of the increase in the other employee group.

#### **ARTICLE 42 - EARLY RETIREMENT INCENTIVE**

Union Position: The Employer is asking that the Union give

back a significant benefit without providing anything in exchange. At the time the retirement incentive language was negotiated, the Union gave the Employer significant new management rights in exchange for the benefit. They should not now be expected to give it up without significant remuneration. Further, no member of the Bargaining Unit will be eligible for the benefit within the next three contract terms. It will therefore cost the Employer nothing for the foreseeable future.

Employer Position: The Employer proposes deletion of the Early Retirement Incentive provision in its entirety. The costs of such a provision are both high and difficult to budget for since they are also unpredictable. The Performance Audit unequivocally recommends deletion of the provision for these reasons. Early Retirement Incentive represents an enormous contingent liability. The Employer's financial condition is simply not such that it can afford to absorb high expenses for early retirement which are unpredictable as to both amounts and timing. Even though no members of either of the AFSCME bargaining units are eligible within the next few years, the Employer must provide the benefit for all PERS eligible employees, thus subjecting itself to that additional liability.

Discussion: The Employer's current liabilities as a result of the Early Retirement Incentive are substantial. The Performance Audit recommended eliminating the Early Retirement Incentive provisions since they constitute an expensive and unpredictable liability. There is no question but that the Early

Retirement Incentive is currently costly, and could be more so in the future.

On the other hand, as the Union points out, at the time that the Incentive was negotiated in 1997, it was negotiated as part of a quid pro quo for additional management rights language. The proposed elimination of the language here, however does not include any concomitant benefit to the Union.

The testimony presented at hearing demonstrated that there are no employees in either this Bargaining Unit or the Local 914 Unit who could possibly become eligible for the Early Retirement Incentive for at least the next nine years. Further, insofar as the parties were able to determine, only one non-bargaining unit employee may conceivably become eligible for the benefit during that time period, and that individual is not expected to take advantage of the benefit. That being the case, the cost of the benefit to the Employer will not increase for at least the term of this Agreement. In view of the lack of immediate increased financial liability together with the Union's strong desire for compensation for elimination of the benefit, there does not appear to be any compelling reason to eliminate the benefit at this time.

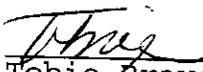
Recommendation: Current Language

Dated: 9/6/06

  
Tobie Braverman, Fact-Finder

**CERTIFICATE OF SERVICE**

The foregoing Report was mailed this 6<sup>th</sup> day of September, 2006 to Charles A. King, Clemans, Nelson & Associates, Inc., 411 West Loveland Avenue, Suite 101, Loveland, OH 45140 and to Kimm A. Massengill-Bernaddin, Ohio Council 8, AFSCME, 6800 North High Street, Worthington, OH 43085-2512 by U.P.S. overnight mail.

  
Tobie Braverman