

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

In the Matter of:

The City of Norwood, Ohio

05-MED-10-1274

and

AFSCME, OHIO COUNCIL 8, LOCAL  
914

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  
R.J. Strange President  
Edgar Bowman, Treasurer  
Clinton Zimmerman, 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 914 (herereinafter 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 Employer 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 dispatchers and support staff in a number of various

city departments, and the Bargaining Unit involved here, an AFSCME bargaining unit representing employees of the Public Works Department. The remainder of the City's employees are unorganized.

The AFSCME Local 914 Bargaining Unit consists of nineteen (19) 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, 3, 6, 7, 10, 17, 18, 21, 23, 26, 29, 30, 35, 37, and 38. 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 financial 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 its 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 the Public Works Department is 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 backdrop that the negotiations between these parties have proceeded to Fact-Finding.

The unresolved issues are as follows:

Article 19 - Layoff and Recall

Article 27 - Classification and Wage Rates

Article 33 - Early Retirement Incentive

## **ISSUES**

### **ARTICLE 19 - LAYOFF AND RECALL**

Union Position: In response to the Employer's proposal that Section 2 of the lay off language be deleted, 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. The Union further proposes that the current minimum manning language be amended to require that the minimum number of full time bargaining unit members be twenty. The number of employees in the Bargaining Unit has been reduced through attrition to nineteen. Parks are not being properly maintained and cleaned. Citizens have complained regarding trash and

restroom cleanliness. Further, the City's sixty miles of road are not being properly maintained due to lack of manpower. The Performance Audit recommended the addition of two employees to the Public Works Department, acknowledging that manpower is insufficient to meet the Employer's needs.

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. Insofar as minimum manning is concerned, this language should also be deleted in order to provide flexibility on the Employer's part as necessary. The Employer argues that the difficulty in keeping up with work relates primarily to the poor attendance within the Bargaining Unit rather than to the number of employees on the pay roll. The entire crew is rarely present at work, with absenteeism rates as high as 50% on some occasions.

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.

The Employer further seeks to delete Section 9 which provides for minimum manning, while the Union seeks to retain the language in part and change the minimum manning requirements from twenty-five to twenty while removing a now irrelevant contingency from the section. While the minimum manning provisions have been included in the Agreement for some time, they have not been complied with by the Employer nor enforced by the Union through

the grievance procedure. The evidence presented at hearing was that there are currently, and have been for some time, nineteen employees in the Bargaining Agreement. The proposal would therefore require the addition of one employee. This would comport, in part, with the recommendation of the Performance Audit which recommends the addition of two employees within the Public Works Department. Although the Employer attributes the inability to keep up with required work to employee attendance, the Performance Audit, which examined all departments in depth, does not note attendance as a problem or as an area in need of attention within the Public Works Department. The work force within Public Works has clearly shrunk, while the amount of work has not. The language as proposed by the Union, however, is confusing on its face since it states that the Employer must maintain fifteen full time employees, but then provides that upon ratification, the Employer must maintain twenty full-time employees within the Bargaining Unit.<sup>1</sup>

Recommendation: Article 19 Section 2: Current Language

Section 9: Amend language as follows: The City of Norwood

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<sup>1</sup> This is different from the prior language which linked the increased manning to a contingency. The new language contains no contingency other than ratification, thus creating conflicting minimum manning requirements.

must maintain at least twenty (20) full-time bargaining unit employees for the duration of the Agreement.

#### **ARTICLE 21 - CLASSIFICATION AND WAGE RATES**

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 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. This Bargaining Unit has made significant wage concessions over the past few years and received wage increases of only 4% between 2003-2006. In order to rectify the serious inequities of recent years, the Union proposes cost of living adjustments in the amount of 2% in each year of the Agreement as well as wage increases in the amount of 3% in 2006, 4% in 2007 and 5% in 2008. When the comparable jurisdictions utilized by the Employer are examined, it is apparent that this group falls within the middle of the wages for suburban city jurisdictions. Because of the Employer's past inequities in granting wage and cost of living increases in the past, the Union additionally proposes a parity provision

which provides that if higher wage increases are provided to any other bargaining units, this Union will receive an equal increase.

Employer Position: The Employer proposes wage increases in the amounts of 0% in 2006, 2% in 2007 and 2% in 2008. When comparables are examined, this bargaining unit is within the top half or higher 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. It cannot, however, provide the wage and cost of living increases demanded by the Union.

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 inequitably. 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. This Bargaining Unit is even further behind since it received only 2% increases while the Local 3278 received 4% during the term of the last Agreement.

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 clearly require expenditures beyond the Employer's capability to pay at this juncture. Further, while these employees have not had substantial wage

increases in several years, they are not underpaid when compared 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 the Employer 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 - 2% 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 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  
percentage 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 3278 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.

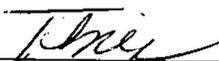
Recommendation: Current language.

Dated: 9/16/02

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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.

  
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Tobie Braverman