



The most recent collective bargaining agreement ("Contract") between the parties expired on August 31, 2006; the parties have been operating under terms of this expired contract since it expired. Continuation of an expired agreement for such an extended period of time has taken these parties into, what is for them, uncharted territory.

Prior to this hearing, the parties had met and negotiated settlement of many unresolved issues, some on their own others with the assistance of the Fact-Finder acting in the role of mediator. However, despite their best efforts, they were unable to reach agreement on a number of other issues, which in turn, led to the need to issue this Fact-Finding Report.

The Parties requested a meeting with the Fact-Finder on November 6, 2008 in the Agency's administrative offices. At that meeting they reached a tentative agreement (T.A.) for submission to their respective constituents for approval. However, in the intervening next few months the Agency concluded that it no longer had the assurance that the T.A. was economically feasible. As a result, it was eventually rejected by the County Commissioners.

In a second attempt to reach settlement, on February 26, 2009 the parties met with the Fact-Finder a second time. In advance, pre-hearing position statements were filed which were duly received and considered by the Fact-Finder. Prior to the swearing in of witnesses the Parties again attempted to mediate a tentative agreement. Through mutual, good-faith effort, substantial progress was made and most of the remaining open issues were resolved. The Parties then asked the Fact-Finder to issue a Report setting forth recommendations for settlement of the few remaining issues.

While the fact-finding report was being drafted the Agency learned that the state budget would not be completed on time (May 2009) as originally thought. As a consequence, absent a level of certainty regarding the level of state and federal support the Agency could expect, it became impossible for the Agency Director to commit to any economic terms that had been T.A.'d in the previous meeting, again interjecting a level of uncertainty into the negotiations. Compounding the difficulties the Agency had no choice

but to also begin a series of layoffs to compensate for the lack of a settled budget.

Through a series of phone conferences between the Parties and the Fact-Finder over the next few months a number of remaining differences were clarified and narrowed.

Finally, a new state budget was signed and it was determined that a third hearing would be necessary to discuss the state of Agency finances, and determine what would be the best course of action on concluding a new agreement. Towards that end, a third hearing was held on December 10, 2009. Again, the Parties engaged in good-faith discussions to discuss the budget, financial projections going forward, and clear up any lingering misunderstandings.

Unfortunately, much had transpired in the months since the last T.A., including layoffs, a continued decline in Agency revenues, and projections that in the months ahead even more belt-tightened and further layoffs would in all likelihood be required. This, of course, created a toxic mix of anger, mistrust and fear between the parties. It soon became apparent that as a consequence, further efforts to achieve a settlement that both parties could recommend to their respective constituencies would be futile. Therefore, the meeting concluded with the parties asking that the Fact-Finder review the record, and issue his report.

### **FACT-FINDER'S FINDINGS AND RECOMMENDTIONS**

Towards that end, the Fact-Finder adopts without discussion that any changes in the contract the Parties had previously implemented prior to the issuance of this Report.

The Parties should be reminded that from the outset for a number of different reasons this was not a garden variety fact-finding. First, the parties have been without a new contract for over 4 years, an inordinately long time for a month-to-month continuation of an expired agreement, and with much changing in the economic landscape (and not for the better) during that

time. Second, absent step increases, no members of the unit over these past 4+ years has received a general wage increase. Third, the timing for the Parties could not have been worse in that for all intents and purposes the economy went off the cliff in the fall of 2008 as negotiations for a new agreement were ongoing. Fourth, the parties were attempting to negotiate a new agreement not only when the Agency's funding is declining due to a falloff in local, state and federal support, but as its caseload was increasing and layoffs looming. Finally, there was fundamental disagreement between the Parties about the flexibility of the Agency to move funds around within the budget in a way that would permit funding of economic enhancements to this contract and prevent layoffs. At a point in time, the Parties simply had to agree to disagree regarding this issue. Needless to say, the combination of these factors created a toxic mix of distrust that was corrosive to a productive negotiating climate.

That said, in recognition of this unfortunate dynamic, in this Report the Fact-Finder has attempted to balance the respective equities of both parties and recommend a settlement that attempts to spread the sacrifice equally, and in a way that is to the degree practicable, revenue neutral to the Agency.

While acceptance of the Report's recommendations by both parties' respective constituencies will not come easily, they are reminded that the alternative is not only further uncertainty, but continued uneasiness in the relationship as well. After 4+ years of limbo, it would seem in the Parties' best interests to bring this new contract to closure so that they may redirect their energies towards working collaboratively to place the relationship on a more even keel. And, the need to begin yet another round of negotiations on a new 3-year agreement loom as well.

#### Duration of the Agreement

It is recommended that the Parties agree to an interim 12-month agreement, incorporating the implementation and expiration dates of the old contract, to wit, September 1, 2009 through August 31, 2010. A 12-month

contract of such short duration would accomplish a number of things: it would recognize the Parties' shared, expressed interest in commencing negotiations for a new, 3-year agreement, limit the impact of wage retroactivity (discussed in more detail, *infra*), bring immediate closure to an expired agreement that has been awkwardly continued on a month-by-month basis for over 50 months, and perhaps most importantly, allow the Agency to have a clearer understanding than it does at present of what its budget projections will be going forward, allowing it to intelligently calculate what it will be able to afford.

#### Article 17.06 A – Wages

##### Union's Position

In light of the raises received by the Agency's other bargaining units in their most recent contracts, the Union originally asked for raises of 3% across the board in each of the three years of the new contract. This position was subsequently revised to a 2% raise effective 9-1-07 and a 3% increase effective 9-1-08. The Union points out that these proposed raises are both reflective of raises received by other units, and consistent with the Agency's ability to pay.

Absent a general increase, however, in the alternative the Union asks for a signing bonus of \$1,000 per employee, paid out in two equal installments (\$500 on January 1, 2010 and \$500 on July 1, 2010), or else the addition of two extra steps to the current salary progression schedule with the standard 4% increase between steps (moving the top step from a level 10 to a level 12).

##### Agency's Position

In light of the unsettled state of the budget, and with the support of traditional funding sources remaining uncertain, the Agency proposes a three year wage freeze (0%-0%-0%) over the life of a new agreement. And, it cites an inability to pay either the proposed signing bonus

(estimated cost - \$183,000/year) or the addition of two extra steps (estimated cost - \$440,000/year)

### Finding and Recommendation

In an attempt to creatively deal with what a budget that is projected to continue its decline, and minimize the potential layoffs that might be necessary to fund a more generous wage settlement, the Fact-Finder recommends a very modest 1.65% general wage increase, retroactive to September 1, 2009.

While not unmindful that the Agency's budget is extremely constrained, it should be pointed out that unlike the Agency's other employees, this would be the first, and only, general wage increase enjoyed by this unit since the old contract expired. Also, in his attempt to recommend a revenue neutral contract, per the Agency's budget calculations the costs to fund a 1.65% general wage increase (\$115,500) would be offset almost dollar-for-dollar under the recommendation to follow, infra, that this unit pay the 10% co-pay (of health care premiums - \$115,500).

With the recommended general wage increase, the Fact-Finder does not believe it prudent to recommend either the proposed signing bonus or additional wage steps at this time. Rather, the Parties will be in a much better position to revisit these issues when it sits down to negotiate its next agreement. Further, he is not unmindful of the fact that every additional dollar needed to fund such economic enhancements would in turn increase the probability that additional layoffs would be necessary, an outcome that would be perverse at a time when caseloads are increasing.

### Proposed "Me Too" Clause

#### Union's Position

In addition to a general wage increase, the Union also proposed that a "me too" clause be written into the agreement that would provide that if any

of the Agency's employees, bargaining unit or non-bargaining unit, received a general increase during the 3-year agreement, that same increase would automatically be granted to this AFSCME local.

#### Agency's Position

The Agency declined to agree to this "me too" provision, preferring instead to stick to its position that a 3-year wage freeze is warranted.

#### Finding and Recommendation

Given the recommendation of an interim, 12-month agreement of sufficient duration for the parties to begin preparing for the negotiation of a longer term contract, the Fact-Finder does not feel that that this would be either the time nor the place to recommend language that interjects yet more fiscal uncertainty into the mix. Again, it is believed that the Parties will be in a better position to prepare for and revisit issues such as these when it sits down to begin negotiations for a new 3-year agreement.

#### Employee Co-Pay of Healthcare Premiums

##### Union's Position

The Union proposed no change in the amount its members currently pay for healthcare coverage, pointing out that with wages stagnant, any increase in out-of-pocket costs for health insurance would result in an actual net loss of income for membership.

##### Agency's Position

The Agency proposed a 10% employee contribution of monthly premiums, with no cap. It pointed out that because premiums are increasing it's fair that employees be expected to share in the costs, as well as the fact that all other Agency employees have already recognized the need for this cost-sharing arrangement.

### Finding and Recommendation

As a general rule, this Fact-Finder is a strong proponent of consistency and standardization in benefits across an Agency's workforce, particularly in purchasing health care coverage where pooling employees and standardizing their coverage with a single insurer increases the leverage that the employer can negotiate better rates.

And, in a time of shared sacrifice, it's important to point out that the members of this local are the only Agency employees not yet participating in this particular cost-sharing arrangement. While it is accurate to say that assumption of this cost would amount to a diminution of net pay to members, this argument also holds true for every other non-AFSCME Agency employee who is already paying the co-pay. Also, it should be pointed out that the level of health care enjoyed by public sector employees not only more often than not exceeds the coverage provided by the private sector (for those that are even offered employer-provided health care), but private sector employees also incur a much larger share of the costs (approximately 25% on average). Lastly, in this Fact-Finder's experience, it's important to note that the move toward 10% employee co-pays has become the norm rather than the exception among Ohio municipal and agency employers.

Accordingly, to share the pain equitably across the Agency's workforce, this Fact-Finder recommends that this unit begin paying the 10% co-pay pickup. However, in an effort to help minimize the financial impact of this recommendation, it is recommended that the 10% co-pay be phased in as follows:

- One-half of the 10% co-pay (or 5% of the costs) beginning January 1, 2010.
- The remaining one-half of the 10% of the co-pay (taking the employee's share to the full 10%) beginning July 1, 2010.

### Additional Day Off

#### Union's Position

The Union suggested that as one way to bring closure to a tortuous contract negotiation process that has dragged on for over 4 years, to some degree attributable to changes in Agency leadership, internal politics and a budget that has unexpectedly and dramatically deteriorated within the past year, would be to grant employees an additional day off on their birthday.

#### Agency's Position

Depending on the parameters and inherent additional costs of the Fact-Finder's Report, the Agency was to mildly receptive to this suggestion, particularly if it helped bring closure to these negotiations, and acknowledging that there were no apparent budgetary implications to granting employees an unpaid day off.

#### Finding and Recommendation

In light of the extremely constrained recommended wage increase received by this local (less than 2% over five years, i.e., the four years since the last contract expired and this proposed prospective 1-year agreement), and the recommendation that the Union begin assuming the 10% co-pay, this Fact-Finder concurs that an additional day off, to fall on an employee's birthday, should be granted, particularly since it amounts to basically a no-cost benefit which is in keeping with this cost-neutral basis of this proposal.

It is recommended that this additional day off be subject to the following restrictions.

- One, if asked, employees would be required to provide documentation of the month/day on which their birthday falls before they would could request the day off.
- Two, the request would need to be made at least thirty (30) calendar days in advance.
- Three, should the day off fall on the employee's regularly scheduled day off/vacation/holiday, the scheduled work day immediately prior or subsequent to the employee's actual birthday could be substituted at the employee's discretion.

- While the requested day off would not be unreasonably denied, neither would it be absolute. That is, if a co-worker is already scheduled off or the supervisor determines that there is inadequate staff to provide coverage due to vacation, illness or layoff, the supervisor and affected employee may negotiate a mutually acceptable alternative day off, preferably within the same pay period.
- This additional day off would be without pay.
- This additional day off be granted only during calendar year 2010.
- In the event that no more than one employee could be accommodated at the same time, the day off would be on a "first-come, first-served" basis rather than seniority.

#### Conclusion

While this Fact-Finder realizes that neither Party will be fully satisfied with this Report, in light of the current unsettled economic conditions I believe that it meets the standard of both Parties being equally unhappy with the recommendations; in addition, the Fact-Finder also believes that a contract under these proposed terms and conditions is better than the alternative, i.e., working under an expired agreement, continued deterioration in the work relationship, additional layoffs, and/or the possibility of a potential work stoppage.

For these reasons, I am confident that it's a package that both parties can feel comfortable recommending to their respective constituencies.

Issued: January 4, 2010

Respectfully submitted,

Jared D. Simmer, Esq.  
Fact-Finder

attach.

## **CERTIFICATE OF SERVICE**

I hereby certify that the above Fact-Finder's Consent Report and Recommendations were served upon the following parties, to wit, AFSCME, Ohio Council 8, Local 2001 (via James Adams) and the Mahoning County Agency of Job and Family Services (via Keven M. Kralj, Esq.) at their request via electronic mail (e-mail), and on the Ohio State Employment Relations Board (via the Administrator, SERB Bureau of Mediation) via e-mail as well this 4<sup>th</sup> day of January 2010.

Jared D. Simmer, Esq.  
Fact-Finder