STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-Finding Between	)	**<u>FINDINGS AND RECOMMENDATIONS</u>**
	)	
AFSCME, OHIO COUNCIL 8, LOCAL 3356	)	
	)	**CASE NO. 06-MED-09-1101**
and	)	
	)	**February 2, 2010**
THE CITY OF GIRARD, OHIO	)	
	)	**Charles Z. Adamson, Fact-Finder**

<u>For AFSCME, Ohio Council 18, Local 3356</u>:
Jaladah Aslam, Staff Representative

<u>For the City of Girard</u>:
James L. Messenger, Esq.

The undersigned was appointed Fact-Finder in this dispute by the State Employment Relations Board (SERB) on July 31, 2009 pursuant to Section 4117.14(C)(3) of the Ohio Revised Code in respect to a unit of Service Department employees employed by the Employer, The City of Girard, Ohio. The current collective bargaining agreement is from January 1, 2004 through December 31, 2006. The parties have met for negotiations on a number of occasions from December, 2006 to the present.

I. HEARING

After mediation on December 9, 2009 the case proceeded to hearing on January 20, 2010 as to the issues where the parties had reached an impasse. The issues remaining at an impasse are the following:

1. Seniority
2. Reduction in Force and Recall
3. Compensation
4. Health Insurance
5. Duration

In compliance with Ohio Revised Code, Section 4117.14(C)(4)(3) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report.

(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 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) Any 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 the private employment.

II. ISSUES AND RECOMMENDATIONS

SENIORITY

The parties have tentatively agreed to all of Article 8 set forth below with the exception of Section 1. B., Department Seniority.

ARTICLE 8
SENIORITY

Section 1. Definitions.

A. Seniority. Seniority is the total service in the City in a bargaining unit position as of the employee's last hire date, including such other services as mandated by State and/or Federal law. Total service shall include all periods during which the employee was in full time bargaining unit service and all periods during which the employee was a part-time bargaining unit service but pro-rated to the equivalent of full-time service.

B. Department Seniority. Department seniority is defined as the length of uninterrupted, continuous, full-time service within a bargaining unit classification in a specific department of the Employer. Specific departments are listed in Addendum A.

Section 2. Break in Service. The following events constitute a break in seniority/continuous service. When continuous service is broken, the employee loses all previously accumulated seniority.

A. Voluntary Resignation;

B. Termination of Employment for just cause;

C. Suspension in excess of sixty (60) days; provided however if the employee returns to work, such employee's seniority is not broken but the time spent on suspension shall be deducted from the employee's seniority accumulation.

D. Failure to report for work without prior notice to the Employer for a minimum of three (3) consecutive workdays;

E. Layoff in excess of twenty-four (24) months;

F. Failure to return from an approved leave of absence. An approved leave of absence does not constitute a break in continuous service, provided the employee follows the proper procedure for such leave and returns to active service immediately following the expiration of the approved leave.

The Union's Position

The Union opposes the Employer's proposal to add the definition of department seniority to the Seniority article of the contract. In the current contract, Article 8, Section 4, Seniority, means total uninterrupted continuous service within the overall bargaining unit of the applicable contract.

The Union maintains that the proposed change could result in many problems. Under the proposed change employees who worked for the Employer in more than one department would lose their total overall seniority that they now enjoy under the current contract. For example, an employee who has worked for the Employer for twenty years in three different departments, such as ten years - street, five years - water and five years - office, would no longer have twenty years overall seniority but separate, discrete seniority blocks. If there was a layoff the employee who only accumulated five years in the office position at the time of the layoff would be penalized and lose the twenty years seniority job protection afforded to the employee under the current contract's seniority provisions. The Employer's proposed change, according to the Union, would deprive employees of a core union right which has afforded employees job protection for many years.

The Employer's Position

The Employer takes the position that Section 1. B. is an essential part of revised Article 8 which the parties have tentatively agreed to except for Section 1. B.. It states that Addendum A on page 35 of the current contract lists all of the bargaining unit classifications which are skilled jobs in particular departments. Each of these classifications, according to the Employer, are compensated from a specific fund listed as a line item in the budget. They are not paid from the General Fund. The layoff and recall sections of the contract are where judgment is exercised as to layoffs, they would provide the parties with sufficient guidance as to seniority along with proposed Section 1.B.

Findings and Recommendations

The Employer has not substantiated its position that Section 1. B. is a necessary provision in revised Article 8. It is well established that job protection and security is one of the major reasons that employees in both public and private sectors opt for union representation. This has been achieved by negotiating contracts where contract language as to seniority, reduction in force and recall and job bidding offer a member of a bargaining unit job security which is of great significance in times of economic downturn and recession.

The record reflects that a history of seniority being based on continuous service in the overall bargaining unit. Sections 1, 4 and 5 of the current contract clearly indicate this. The Union's argument opposing department seniority has merit. It would not be fair and equitable if departmental seniority resulted in the layoff of an employee with many years of employment in the bargaining unit because the employee had worked in more than one department and the last position was of short duration.

Accordingly, in view of the above, and the record as a whole, the Employer's proposal to add Section 1.B., Department Seniority, to Article 8 is rejected. It is recommended that the remainder of Article 8 tentatively agreed to by the parties be approved.

REDUCTION IN FORCE AND RECALL

The parties have tentatively agreed to all sections of new Article 12, Reduction in Force and Recall, with the exception of Section 2, Procedure, set forth below:

Section 2. Procedure. When the City determines that lack of work, lack of funds, or reorganization in the operations of the City is necessary, a reduction in force (i.e., layoff or job abolishment) shall occur. If initiated, such reduction shall occur by total seniority within the affected classification. The employee with the least amount of total seniority within the affected classification shall be laid off first. Within the affected classification, the City agrees to first reduce all temporary, seasonal, and part-time employees prior to initiating a reduction of regular full-time employees. Provided however, if there is a part-time position currently filled by a part-time employee in a different bargaining unit classification for which the laid-off full-time employee is qualified then such full-time employee shall be offered the part-time position at the rate of pay of the part-time position and the part-time employee laid off if the full-time employee accepts the part-time position.

A bargaining unit member residing in a higher classification within a department may utilize his total seniority to displace a member with less total seniority residing in a equal or lower classification within a department. Total seniority, for the purposes of reduction and recall, is calculated in accordance with Article 8 of this Agreement.

Employees wishing to exercise their option to displace a less senior employee must give the City notice of such intent within seven (7) calendar days of receipt of the layoff notice.

The Employer's Position

The Employer takes the position that new Article 12, to which the parties have tentatively agreed, is of great importance since Section 5 in the Seniority section of the current contract "...resulted in protracted grievance and arbitration and court proceedings from December, 2001 through July 2009." It maintains that Section 2, Procedure is an essential part of new Article 12 because it is consistent with its proposal as to Article 8, 1.B. - The Employer wants departmental seniority as opposed to the current overall bargaining unit seniority to be applicable to RIFs and Recall.

The Employer points out that because of Arbitrator William Miller Jr.'s December 20, 2002 arbitration award regarding December, 2001 layoffs which resulted in protracted litigation, the Employer had to no longer employ certain part-time professional employees such as the part-time Law Director and the part-time Engineer. It also notes that the Employer has long employed part-time employees, not only in professional positions but also as crossing guards. It argues that RIF and Recall provisions would not even apply to the layoff of crossing guards, minimum wage positions, since the laid off guards would be in a better financial position if they elected to apply for unemployment.

The Union's Position

The Union states that it is immaterial whether or not the arbitrator's opinion enforced by the courts is correct or not - the Employer has to abide by the resulting consequences. Job security for full-time employees is of the utmost importance. It asserts that the arbitrator's opinion that part-time employees should be laid-off before full-time employees should be followed by the Employer. It should not be overlooked that the Employer has been in fiscal emergency for some time. Under these circumstances the money saved by laying off of several part-time employees could result in the retention of a full-time employee.

Section 2, Procedure, is opposed by the Union because departmental seniority as opposed to overall bargaining unit seniority would be applicable if there was a reduction in force since the Employer's proposal provides that said reduction "...shall occur by total seniority within the affected classification".

Findings and Recommendations

As indicated above, the parties are at an impasse as to whether departmental seniority or overall bargaining unit seniority shall apply in the event of a RIF. The Union's position in support of the current overall bargaining unit seniority should be recommended as to RIFs for the same reasons set forth above in respect to Article 8, Seniority, Section 1.B.

Accordingly, it is concluded that the Employer's position as to Section 2, Procedure, is not recommended by the undersigned. New Article 12 warrants adoption by the parties absent the inclusion of Section 2, Procedure.

COMPENSATION

The Employer's Position

The Employer asserts that at the present time it is unable to offer the bargaining unit an increase in compensation because of its poor financial situation which has existed for several years. The last compensation increase to the bargaining unit was a 3 ½% increase effective January 1, 2003.

The Employer has been in fiscal emergency from August 8, 2001 to date. Nita R. Hendryx , Chief Project manager of The Auditor of State's Office, testified on behalf of the Employer indicating that a municipality falls into fiscal emergency requiring supervision from her office if it meets any of the six criteria set forth in

O.R.C. 118.03. The Employer met two of the criteria after fiscal emergency analysis resulted in the Auditor of State issuing a fiscal emergency Certificate on August 8, 2001. The Auditor's 2001 analysis reflected that the Employer had defaulted on two Ohio Water Development Loans.

As a result of the fiscal emergency certification a representative of the Auditor of State's Office has been the Fiscal Supervisor from 2001 to the present Hendryx, as Fiscal Supervisor, has developed a plan to get the Employer out of insolvency that was put in effect in 2002. The plan involves cost cutting measures and revenue plans. However, according to Hendryx, because of the bleak economy the Employer remains in fiscal emergency.

Hendryx testified as to a Budget Analysis and Cash Summary by Fund through December 31, 2009. The record reflects that as of January 1, 2009 the Employer had a cash balance of $282,445.50 in its General Operating Fund which was depleted to an unencumbered cash balance of $71,149.15 as of December 31, 2009.

According to Hendryx some of the bargaining unit employees are paid out of the General Fund. Police and Fire employees wages are also paid from the General Fund. She pointed out, however, that State law prohibits other funds from transferring money into the General Fund.

Hendryx characterized the General Fund as currently being "under water" due to a decrease in the receipt of income and real estate taxes. The same decreases in revenue have occurred throughout the Trumbull and Mahoning County area. Because of an increase in mortgage payment delinquencies and foreclosures less money has been received from real property taxes.

Hendryx also referred to revenue sources for the street department - the gasoline tax and auto license plate fee. There has been a decrease because two gas stations located within the City have closed. Water and Sewer revenues have decreased because residents are delinquent in paying their water bills. Some bargaining unit employee's wages are paid from the water fund. Hendryx explained that only the General Fund can transfer funds to Sewer and Water, but Sewer and Water cannot transfer funds to the General Fund.

Hendryx referred to a graph reflecting Income Tax Revenues. It indicates a decline in revenue from 2007 to 2009 of $480,000 resulting from Indalex, the City's major employer, closing its Girard operations in 2007. She stated that the Girard residents water bill payments are the largest source of funding for the Water Department. From 2005 to 2009 the Employer has increased the Water Rate by 20%.

Hendryx also stated that the General Fund pays for the bargaining unit employees health care. She stated that the four sources of the Employer's revenues were General Fund, Local Income Tax, Real Property Tax and Local Government funds received from the State of Ohio each month. A less important revenue source is Court Fees and Fines which are applied toward local court operations. The Street Department is funded by the gasoline and Motor Vehicle Tax, the Water Department from user fees and the Sewer Operations from Sewer bills and rental charges.

The latest contract between the Employer and OPBA covering the patrol/dispatch unit effective January 1, 2007 through December 31, 2009 provided for 2% general wage increases each year effective January 1, 2007, January 1, 2008 and January 1, 2009. The latest contract between the Employer and the Fire Fighters Union (IAFF) for the same three year period provides for 2% general wage increases each year for 2007, 2008 and 2009.

The record reflects that starting in 2007 both the police and fire bargaining units have been covered by a health plan providing for employee payments for deductibles and out of pocket maximums. According to the Employer, the health plan savings realized by the Employer, which is self-insured, has funded the 2% annual wage increases for both the police and fire fighters. During this same period the employees in the bargaining unit involved herein have received no wage increases,but have been covered by a so-called "Cadillac" plan where there are no deductibles except for a $10.00 co-pay for an office visit. According to the Employer, this plan without deductibles is too expensive to continue to fund, particularly when one considers that the bargaining unit is aging and continues to require more expensive and more frequent medical service.

The record reflects that City Auditor Sam Zirafi received an 8.5% wage increase effective January 1, 2009. He testified as to the Employer's pension packages for both police and fire personnel.

The Union's Position

Brian Maynard, the Union President, stated that the unit cannot afford to pay any more for health insurance without receiving a wage increase. Excerpts from service department contracts from municipalities in the Trumbull and Mahoning County area indicate that employees in other municipalities receive higher wages than Gerard employees in the same positions. The Employer, however, is the only municipality in fiscal emergency in the area.

The Union notes that the bargaining unit has waited for the safety forces to complete negotiations with the Employer since it has been the practice for the Employer to give all of its bargaining units the same raises and health insurance packages.

Both safety force units, patrolmen and firefighters, were awarded 2% annual wage increases by arbitrators. However, the Employer has refused to offer the bargaining unit involved herein any wage increases, but insists on enrollment in the new higher cost health plan covering the safety forces. Enrollment in the new health plan without any wage increase would cost the members of the service department unit substantial out of pocket expenses without any additional compensation to offset the new costs.

Findings and Recommendations

Compensation and Health Care constitute the financial package for a bargaining unit. They cannot be considered separately since they comprise an employer's main financial contractual obligation other than pension and retirement issues. The only practical course the undersigned can follow in this matter is to link wages and health care together prior to making a compensation recommendation. Accordingly, since the undersigned has recommended that the service department unit be covered by the same health plan as the safety forces the following compensation is recommended:

Effective January 1, 2010 - 2%

Effective January 1, 2011 - 2%

Effective January 1, 2012 - 2%

HEALTH CARE

The Employer's Position

Safety Director Jerry Lambert testified on behalf of the Employer that in 2007 it solicited bids for a health insurance package covering the entire city for $200,000. At that time the service department unit's "Cadillac" plan provided employees with 100% coverage without employee contributions. Employees paid minimal amounts for office visits ($10), Emergency Service and Prescription Drugs.

Also, in 2007 Police and Fire as a quid pro quo for their wage increases agreed to drop their 100% coverage plan to an 80% Employer 20% employee contribution plan along with deductibles and minimal increases for office visits. As a result of the new health coverage for the safety forces, the Employer saved $260,000; $100,000 of the savings was used to pay for the 2% annual wage increases referred to above. According to Lambert the Employer would not have been able to fund these increases without the safety forces changing health coverage.

Lambert stated that at present the safety forces have agreed on a new health plan which the Employer has proposed should also cover the service department unit. Some of the plan's features are as follows: 90% coverage after deductible for outpatient hospital service, outpatient surgical facility, and outpatient professional surgical and 100% coverage for specialist office visit after $50 co-pay. (See Exhibit A for a complete summary of the Plan). The plan also provides increased dental and vision benefits.

Lambert emphasized that the Employer anticipated substantial savings if all of its employees are on a city-wide health plan based on health claim experience in 2009.

The Union's Position

The Union reiterated its position as to wages and health care referred to above indicating it was not fair for service employees to pay more for health care without receiving raises like the safety forces.

Findings and Recommendations

The cost of health care for employees has continued to rise over the years. It is a problem that faces all employers in this country, whether public or private, since the United States is the only industrialized nation that does not have a national health care plan. President Obama's proposals for health care have occupied the legislative agenda of both the House and Senate for much of the Obama administration's first year. A fact-finder who must make recommendations as to health and wages, is confronted with an act of balancing the needs of the employees along with the responsibility of employer to keep overall employment costs within an annual budget.

Some years ago public sector employers were able to provide generous health care coverage for their employees with either no contribution by the employees or minimal contributions by them toward their health care costs. As the cost of health care has risen over the years this situation has resulted in substantially all employers requiring employees to make contributions to the cost of their annual health care in greater or lesser amounts. In the instant matter, the health care costs and the costs of wages must be considered one total package. Employees are going to be required to make a greater contribution toward their health care costs. However, a recommendation should not be made where th total health care and wage package results in employees receiving no wage increases.

Accordingly, in view of the above and the record as a whole, it is recommended that the service department unit contract contain the same health plan as the plan approved by the police and firefighters. As indicated above, health and wages are a total package. The new health plan for this unit is part of the package including a 2% annual increase in wages for three years.

DURATION

Based on the above recommendations made as to Compensation and Health Care it is hereby recommended that the new contract should be of three years duration. The contract should commence January 1, 2010 and expire at midnight, December 31, 2012.

Cleveland, Ohio
Cuyahoga County
February 2, 2010

Charles Z. Adamson, Fact-Finder

	Network	Non-Network
Individual Deductible	$750.00	$1500.00
Family Deductible	$1500.00	$3000.00
Individual Out-of-Pocket Maximum	$1500.00	$3000.00
Family Out-of-Pocket Maximum	$3000.00	$6000.00
Type of Service	**Network**	**Non-Network**
Accident Emergency Treatment Copay is inclusive of ER Physician, Diagnostic x-ray & Lab, and Facility charges.	100% after $100 copay Copay waived if admitted	
Allergy Injections	90% after deductible	60% after deductible
Allergy Testing	90% after deductible	60% after deductible
Ambulance	90% after deductible	
Anesthesia	90% after deductible	60% after deductible
Assistant Surgeon	90% after deductible	60% after deductible
Colonscopy *Routine and Medical*	90% after deductible	
Diagnostic Lab, X-ray and Pathology	90% after deductible	60% after deductible
Dialysis	90% after deductible	60% after deductible
Physician Office Visits	100% after $25 copay	60% after deductible
Durable Medical Equipment	90% after deductible	60% after deductible
Home Health Care	90% after deductible	60% after deductible
Home Private Duty Nursing	90% after deductible	60% after deductible
Hospice Care – Outpatient 120 Lifetime max combined with inpatient	90% after deductible	60% after deductible
Hospice Care – Inpatient	90% after deductible	60% after deductible
Inpatient Hospital Room & Board (Semi-Private)	90% after deductible	60% after deductible
Inpatient Physician Visits	90% after deductible	60% after deductible
In Hospital Miscellaneous Charges	90% after deductible	60% after deductible
Intensive Care / Cardiac Care	90% after deductible	60% after deductible
In Hospital Physician Consultations	90% after deductible	60% after deductible
Inpatient Mental & Nervous *30 day Calendar Year maximum*	90% after deductible	60% after deductible
Inpatient Alcoholism & Drug Abuse *30 day Calendar Year maximum* *$50,000 Lifetime maximum*	90% after deductible	60% after deductible
Inpatient Rehabilitation Facility	90% after deductible	60% after deductible
Mammograms (Routine and/or medical) *1 per Calendar Year - $85 maximum*	90% after deductible	60% after deductible
Maternity Services (Maternity for dependent children not covered)	90% after deductible	60% after deductible
Medical Emergency Treatment Copay is inclusive of ER Physician, Diagnostic x-ray & Lab, and Facility charges.	100% after $100 copay copay waived if admitted	

EX. A.

Type of Service	Network	Non-Network
Medical Supplies	90% after deductible	60% after deductible
Organ Transplant	90% after deductible	60% after deductible
Acquisition of Human Donor Organ	90% after deductible	60% after deductible
Transportation of Covered Person to nearest Transplant Center	90% after deductible	60% after deductible
Orthotics	90% after deductible	60% after deductible
Outpatient Hospital Services	90% after deductible	60% after deductible
Outpatient Mental & Nervous *20 visit Calendar Year maximum*	90% after deductible	60% after deductible
Outpatient Alcoholism & Drug Abuse *20 visit Calendar Year maximum* *$50,000 Lifetime maximum*	90% after deductible	60% after deductible
Outpatient Surgical Facility	90% after deductible	60% after deductible
Outpatient Professional Surgical	90% after deductible	60% after deductible
Pre-Admission Testing	90% after deductible	60% after deductible
Physical & Speech Therapy 60 visit calendae year maximum	90% after deductible	60% after deductible
Radiotherapy / Chemotherapy	90% after deductible	60% after deductible
Routine Exams *Immunizations covered are tetanus toxoid, rabies vaccine & meningococcal polysaccharide vaccine.*	100% after $25 copay	60% after deductible
Routine Nursery Care	90% after deductible	60% after deductible
Routine Pap Smear *1 per Calendar Year*	90% after deductible	60% after deductible
Routine Hearing Exam *1 per Calendar Year*	90% after deductible	60% after deductible
Skilled Nursing Care *100 day Calendar Year maximum*	90% after deductible	60% after deductible
Second Surgical Opinion	90% after deductible	60% after deductible
Specialist Office Visit	100% after $50 copay	60% after deductible
Urgent Care Facility	100% after $50 copay	60% after deductible
Voluntary Sterilization	90% after deductible	60% after deductible
Well Child Care Ages Birth-9 (including routine immunizations) *$1000 Calendar Year maximum*	100% after $25 copay	60% after deductible
Lifetime Maximum	$1,000,000	
Prescription Drug Benefit **Mandatory Generic* **Mandatory Mail Order for maintenance medications after 3 refills at retail*	30-day supply: Retail $15 Generic / $30 Formulary / $45 Non Formulary 90-day supply: Mail Order $30 Generic / $60 Formulary / $90 Non Formulary	

DENTAL BENEFITS

Diagnostic / Preventative	100%
Basic Restorative	100%
Oral Surgery	100%
Major Restorative / Prosthodontics	100%
Orthodontics	100%
Calendar Year Maximum (all services)	$2,000 per individual
Lifetime Maximum – Orthodontics	$1,500 per individual

VISION BENEFITS

Calendar Year Maximum	$500 per individual
Vision Exams, Frames, Lenses, Contact Lenses	100%