

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FACT-FINDING PROCEEDINGS

FINDINGS & RECOMMENDATIONS

AS ISSUED

GREGORY JAMES VAN PELT

October 15, 2008

IN THE MATTER OF:

City of East Liverpool  
(Employer)

-and-

AFSCME Ohio Council 8  
Local 677  
(Union)

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) SERB Case Nos.: 07-MED-02-0148  
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STATE EMPLOYMENT  
RELATIONS BOARD

APPEARANCES:

On Behalf of the Employer:

Sandy Conley  
Account Manager  
Clemans Nelson & Associates  
2351 South Arlington Road, Suite A  
Akron, OH 44319

On Behalf of the Union:

Jaladah Aslam  
Staff Representative  
AFSCME Ohio Council 8  
150 S. Four Mile Run Road  
Youngstown, OH 44515

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## **SUBMISSION**

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained until April 30, 2007. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Fact-finder in the matter. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on a number of occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested that the Fact-finder attempt mediation of unresolved issues prior to holding an evidentiary hearing. A mediation session was accordingly convened on September 26, 2008 at the East Liverpool City Hall in East Liverpool, Ohio. Mediation resulted in settlement of proposals at impasse between the Parties, but failed to resolve the remaining issues below. Accordingly, an evidentiary hearing was held following mediation, at which the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed on September 26, 2008.

## **ISSUES AT IMPASSE**

The Parties identified and presented the following issues as unresolved:

- 1. Article 5 - Bargaining Unit**
- 2. Article 11 - Wages**
- 3. Article 24 – Foul Weather Gear\***
- 4. Article 30 – Hospitalization/Health Care**
- 5. Article 31 – AFSCME Health and Welfare Plan**
- 6. Article 52 - Duration**

**\*Resolved Prior to Hearing**

## **TENTATIVE AGREEMENTS**

Prior to hearing the Parties reached the following tentative agreements, memorialized by reference and recommended herein:

- 1. Memorandum of Understanding - Layoff and Recall.**
- 2. Article 12 – Work Day and Work Week**
- 3. Article 21 – Vacations**
- 4. Article 23 – Meal Ticket Allowance for Continuing Overtime Work**
- 5. Article 24 – Provision of Foul Weather Gear**
- 6. Article 35 – Bereavement Leave/Personal Absences**
- 7. Article 36 – Longevity Pay**
- 8. Article 37 – Call Out/Overtime**
- 9. Article 49 – No Contracting Out**

Any and all other mutually accepted tentative agreements.

### **STATUTORY CONSIDERATIONS**

In weighing the positions presented by the Parties, the Fact-finder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq.*, specifically:

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(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;
- 4117-9-05(K)(3)** The interests 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;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### **BACKGROUND AND STATUTORY CONSIDERATIONS**

The City of East Liverpool, Ohio (City or Employer) operates a number of non-safety Departments under the office of its Service-Safety Director. Among these are the Incinerator, Water and Sewer Departments, which function as public utilities and are consequently enterprise, or revenue-generating operations of the City; and the Service and Street Departments, funded under East Liverpool's general fund. All non-supervisory employees of the above Departments are members of Local 677, a deemed bargaining unit represented by AFSCME Ohio Council 8 (Union or Local 677). The Parties have related under the terms of a succession of collective bargaining agreements, the most recent of which took effect on May 1, 2004, and obtained until April 30, 2007.

Following expiration of the 2004-2007 Agreement, the Parties met with a Federal Mediator, and reached tentative agreement to terms of a successor Agreement in November of 2007. However, Local 677's ratification election in December of 2007 resulted in a tie vote. After receiving clarification regarding an outstanding issue, the Union subsequently rejected the tentative agreement by one vote some three months later.

The Employer here faces revenue shortfalls common to Ohio municipalities. The effects of stagnant or declining general fund revenues are exacerbated by increasing fuel and other operating costs. While the majority of bargaining unit members are employed in enterprise Departments, which generate revenue, the income from these operations, indeed, their future viability, is far from secure. Declining customer bases, coupled with increases in operating costs have made the future of East Liverpool's public utilities tenuous. This is particularly true in the City's Incinerator – or trash collection and recycling - Department, where extraordinary measures have recently been undertaken to continue operations. Additionally, bargaining unit employees have been transferred between operating Departments in order to avoid layoffs.

As in virtually every contract negotiation, the unpredictably escalating costs of health care are also an issue for the Parties here. Premium increases present tension between the Employer's need to seek increased employee participation and the resultant reduction in real income this represents to employees.

In consideration of the above factors, the following Fact Finding Report is respectfully rendered, in an effort to balance these sometimes conflicting interests of the Parties.

## **FINDINGS AND RECOMMENDATIONS**

### **ARTICLE 5** **BARGAINING UNIT**

#### **Employer's Proposal:**

Although it presently does not use part-time employees, the City argues that declining revenues may require additional flexibility in the utilization of part-time workers. Accordingly, it seeks to increase the current 20 hour threshold for part-time status to 33 hours.

#### **Union Position:**

While it agrees that some flexibility in the use of part-time workers is acceptable, Local 677

contends that the Employer's proposal for a 33 hour threshold is excessive, and might encourage reduction of some full-time employees to part-time status.

**Findings and Recommendations:**

In consideration of the City's recycling program and other programs, it is reasonable to believe that some flexibility in the use of part-time employees would increase operational efficiencies. However, the threshold sought by the City might result in the reduction of current full-time employees to part-time status, with the resultant loss of compensation and benefits. Accordingly, an increase in the threshold for part-time workers to 28 hours is recommended.

***Section 3.*** For the purpose of the above general provision, "part-time employees" shall be defined as employees other than casual or seasonal employees who have worked on the average less than ~~twenty (20)~~ **twenty-eight (28)** hours per week during the immediate past calendar year.

**ARTICLE 11**  
**WAGES**

**Employer's Proposal:**

The City proposes wage increases consistent with those provided in the tentative agreement. However, the Employer argues that its current fiscal position requires that the increases not take effect until January of 2009: i.e., \$.40 per hour effective January 1, 2009; \$.25 per hour on January 1, 2010; and \$.20 per hour on January 1, 2011.

**Union Position:**

Local 677 argues that the Parties agreed to wage increases effective on January 1, 2008, not 2009 as now proposed by the City. Moreover, the Union seeks compensation increases to offset increases in health care premiums.

**Findings and Recommendations:**

Given the impact of health care increases on take-home pay, the Union's contention that wage increases for the 2009 contract year are warranted is well-taken. However, as the fact-finding process has been extended into the final quarter of 2008, and the Duration provisions of the successor Agreement are recommended to extend through 2011, the most effective method of compensating Local 677 for the 2008 contract year would be by means of equity adjustment. However, the impact of such adjustment might pose an undue burden on the Employer if imposed in one amount. Accordingly, an adjustment of \$400 on ratification of the Agreement

and an additional adjustment of \$400 in May of 2009 is recommended.

***Section 1.*** *Effective January 1, ~~2005~~ 2009, the wage rates for all bargaining unit classifications will be increased by ~~twenty cents (\$.20)~~ forty cents (\$.40).*

***Within thirty (30) days of execution of this Agreement, actively employed bargaining unit employees employed as of May 1, 2008, shall be entitled to a one-time lump sum wage equity adjustment of four hundred dollars (\$400.00)***

*Effective January 1, ~~2006~~ 2010, the wage rates for all bargaining unit classifications will be increased by twenty-five cents (\$.25).*

***Not later than May 1, 2009, actively employed bargaining unit employees employed as of May 1, 2008, shall be entitled to a one-time lump sum wage equity adjustment of four hundred dollars (\$400.00)***

*Effective January 1, ~~2007~~ 2011, the wage rates for all bargaining unit classifications will be increased by ~~forty cents (\$.40)~~ twenty cents (\$.20).*

*Each employee, for the term of this agreement, shall receive as his base wage the applicable rate of pay contained in Appendix C.*

### **ARTICLE 30** **HOSPITALIZATION/HEALTH CARE**

**Employer's Proposal:**

The City proposes to increase the cost-sharing amount for bargaining unit members to reflect increases in the AFSCME Health & Welfare Plan provided Local 677 members under Article 31. In the alternative, the City proposes to eliminate Article 31, and to adjust employee's contributions accordingly.

**Union Proposal:**

The Union argues that bargaining unit members already pay more toward health insurance coverage than other AFSCME units in the area – more than 20%, as opposed to a flat rate or a percentage of the premium. Accordingly, the Union urges that the current contribution level be maintained.

**Findings and Recommendations:**

While other City employees are eligible to obtain their vision, prescription drug, dental and other ancillary health care benefits through the AFSCME Health Care Plan, none take advantage of the opportunity. Rather, the cost of those premiums is included in the monthly maximum base Employer contribution to the hospitalization and major medical plan. By selecting to obtain ancillary health coverage through the AFSCME Plan - for which the Employer pays – employees are effectively choosing an alternative carrier for that portion of their health care. Thus, the City’s proposal to deduct the amount of that coverage, including the current AFSCME Plan premium increase, is entirely reasonable and accordingly recommended.

In the past, members of the bargaining unit subscribing to family coverage have been assessed an additional \$24.12 per month not imposed on single employees under a previous premium calculation formula. To mitigate the effects of the increases recommended below, it is recommended that the additional assessment on single members be spread over the three contract years.

Finally, implementation and utilization of Health and Medical Insurance Committees has proven a very effective means of dealing with health care issues impacting all employees. Accordingly, institution of a Health and Medical Insurance Committee is strongly recommended.

**Section 3.**

A. *The Employer shall contribute up to maximum base amount, per employee, per month, towards the total cost of coverage as follows:*

<u>Effective Date</u>	<u>Type of Coverage</u>	<u>Maximum Base Monthly Employer Contribution</u>
<del>5/1/00</del>	Single	<del>\$254.00</del>
<b>January 2009</b>		<b>\$220.25</b>
<b>January 2010</b>		<b>\$205.25</b>
<b>January 2011</b>		<b>\$196.25</b>
<del>5/1/04</del>	Family	<del>\$599.00</del>
<b>January 2009</b>		<b>\$561.25</b>

B. ~~Employees electing family coverage shall continue to pay twenty four dollar and twelve cents (\$24.12) per month for the duration of this agreement plus any excess~~

~~costs as set forth in Section C herein.~~ **The above amounts reflect a reduction of the Employer contribution to the AFSCME Care Plan.**

C. Should the cost exceed the maximum amounts set forth in subsections A ~~and B~~ above, the participating employee shall be required to contribute one hundred percent (100%) of the amount in excess of such maximum, for the next one hundred dollars (\$100.00) of excess cost, in order to continue participation.

Should the cost of coverage exceed the amounts set forth in subsections A and B ~~and C~~ herein, any such costs shall be split equally between the Employer and the participating employee.

**Section 4.** ~~Within six (6) months of the execution of this agreement,~~ The City will convene a Health and Medical Insurance Committee comprised of one (1) representative from each of the City bargaining units and one (1) management representative. The purpose of this Committee shall be to immediately review the cost utilization and benefit levels of the existing health insurance program and to make recommendations to the City administration relative to cost containment provisions. The Committee should then review other alternative insurance plans for the purpose of finding plans which are more cost effective than the existing plan. The City and Union agree to cooperate to the fullest extent for the purpose of making plan changes where appropriate for the purpose of reducing the City's health care costs. Cost containment measures recommended by the Committee and adopted by the City shall not require the mutual agreement set forth in Section 1 herein.

## **ARTICLE 31**

### **AFSCME HEALTH AND WELFARE PLAN**

#### **Employer's Proposal:**

The City agrees to pay the increase in the per-employee cost of the AFSCME Health Care Plan, but asks that the increase – from \$55.75 per month to \$63.75 effective January 1, 2009 – be deducted from the City's contribution to bargaining unit members' Hospitalization/Health Care premiums provided under Article 30 of the Agreement.

#### **Union Position:**

The Union concedes that the AFSCME Health and Welfare Plan will increase to \$63.75 per month.

#### **Findings and Recommendations:**

As discussed with regard to Article 30, *supra*, bargaining unit members have chosen to

obtain their vision and other ancillary health care benefits through the AFSCME Health and Welfare Plan rather than through the Hospitalization/Health Care Plan provided by the Employer. Accordingly, it is appropriate that adjustment be made to the Employer's contribution to the Hospitalization/Health Care Plan to accommodate increases in premiums to the AFSCME Plan.

*The City shall pay at a rate of ~~fifty dollars and twenty five cents (\$50.25)~~ **fifty-five dollars and seventy-five cents (\$55.75)** per employee per month to the Ohio AFSCME Care Plan for the following health care benefits:*

- A. *Vision care;*
- B. *Drug purchases;*
- C. *Life insurance;*
- D. *Hearing aid;*
- E. *Dental care Level 2*

*Effective ~~May 1, 2004~~ **January 1, 2009**, the monthly per employee cost shall increase to ~~fifty five dollars and seventy five cents (\$55.75)~~ **sixty-three dollars and seventy-five cents (\$63.75)** per full-time employee per month to the Ohio AFSCME Care Plan for the following health care benefits, and shall remain at that amount for the term of this agreement and any extension thereof:*

- A. *Vision care;*
- B. *Drug purchases;*
- C. *Life insurance;*
- D. *Hearing aid;*
- E. *Dental care Level 2*

## **ARTICLE 52** **DURATION**

### **Employer's Proposal:**

The Employer proposes a three year contract period, commencing January 1, 2009 and obtaining through December 31, 2011.

### **Union Position:**

The Union does not oppose a three year Agreement, but argues for retroactive pay for 2008.

### **Findings and Recommendations:**

As noted *supra*, the extended negotiations for a successor Agreement have resulted in a contract that will not effectively be implemented until almost the January, 2009 date proposed by the City. As the Union's concerns regarding pay increases retroactive to January of 2008 are dealt with the in equity adjustments recommended in Article 11, the three year duration provision proposed by the Employer is recommended.

*This agreement shall be effective ~~May 1, 2004~~ **January 1, 2009**, and remain in effect until ~~April 30, 2007~~ **December 31, 2011**. Negotiations will be in compliance with all rules and regulations of Ohio Revised Code Section 4117.*

**SUMMARY OF RECOMMENDATIONS**

**Article 5 - Bargaining Unit**

*Increase to 28 threshold hours for part-time status.*

**Article 11 – Wages**

*\$400 equity adjustment within 30 days following ratification of Agreement*

*\$.40 per hour increase effective January 1, 2009*

*\$400 equity adjustment, May, 2009*

*\$.25 per hour increase effective January 1, 2010*

*\$.20 per hour increase effective January 1, 2011*

**Article 24 – Foul Weather Gear\***

**Article 30 – Hospitalization/Health Care**

*Reduction of Maximum Base Monthly Employer Contribution*

*Family to \$561.25 effective January, 2009*

*Single to \$220.25, January 2009; \$205.25, January 2010; \$196.25, January 2011*

**Article 31 – AFSCME Health and Welfare Plan**

*Increase in Employer premium contribution to AFSCME Health and Welfare Plan*

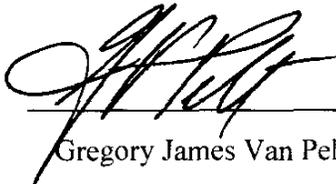
*\$63.75 effective January 1, 2009*

**Article 52 - Duration**

*Three year Agreement, effective through December 31, 2011.*

**Any and all mutually accepted tentative agreements.**

**\*Resolved at Hearing**



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Gregory James Van Pelt

Respectfully submitted this 15<sup>th</sup> day of October, 2008  
At Shaker Heights, Cuyahoga County, Ohio