

**Before the State Employment Relations Board  
State of Ohio**

2008 JUN -3 P 1:20

**In the matter of**

City of Bexley  
Employer

08-MED-05-0620

Case No. ~~07-REP-12-0178~~

And

Sandra Mendel Furman, Fact  
finder

Ohio Council 8, AFSCME, AFL-CIO  
and its Clerical/Technical Local  
Union

**FACTFINDER'S REPORT**

**Procedural Matters**

The parties mutually selected the undersigned as fact finder. SERB was notified of the appointment on May 14, 2008. and approved it on May 19, 2008. Pre hearing statements were received by the fact finder and served by each party upon the opposing party prior to the hearing. There has been substantial compliance with OAC rule 4117-9-05 (F).

The hearing was held on May 12, 2008 at the Bexley City Hall. The fact finder offered to mediate. The parties indicated that mediation would serve no valid purpose, as the parties had previously engaged in good faith attempts to resolve the single remaining issue: PERS Employer pick up.

A full hearing was had. The parties presented argument and exhibits in support of their respective positions. Representing the Employer were and Labor Counsel David Blaugrund and Law Director Lou Chodosh. Also present on behalf of the City were John Brennan, Mayor; and Service Director William Harvey. The Union was represented by Ohio

Council 8 Staff representative LeRoy Heard, Staff representative Eric Boyd, and Regional Director Roberta Skok..

The parties had engaged in several bargaining sessions for its initial contract. The parties had reached tentative agreement (TA) on all issues. The TA was submitted to the union membership for vote. It was defeated by a clear majority of the unit. After the TA was voted down by the unit, the Union presented a new bargaining item: employer PERS pick up. The parties could not agree on this item, and the matter was referred to a fact finder. The report is submitted at the date stipulated by the parties.

**Findings of Fact**

1. The City of Bexley has four bargaining units: the FOP represents the police department; Ohio Council 8 and its Local 3838 represent the service and maintenance unit and the clerical/technical unit and CWA represents a two position unit (Animal Control Officer and Parking Control Officer) and the dispatchers.
2. AFSCME Local 3838 has been a bargaining representative for many years. It was certified in 1994.
3. The City typically grants all of its employees-represented and not represented- similar wage and benefits.
4. Currently, there is no joint bargaining.
5. The FOP has set the pattern in the past for the amount of increases; this is recognized in the parties TA in section 15.6.<sup>1</sup>
6. The City has the ability to pay for the benefit sought by the Union.
7. No employees have been laid off in recent memory.
8. The bargaining unit was recognized through the filing of a voluntary petition. There was no timely response by the City. SERB certified the unit pursuant to statute on February 20, 2008.
9. The bargaining unit has 15 members.
10. Ohio Council 8, AFSCME, AFL-CIO is the certified bargaining representative for its Clerical and Technical employees unit.

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<sup>1</sup> “The wage scales will be increased at the same times and by the same percentages as the City’s recently ratified FOP contract.”

11. The unit consists of the following: all clerical and technical employees of the City of Bexley including: Water Department Accounting Clerk, City Hall Secretary, Recreation Department Secretary, Executive Assistant to the Service Director, Executive Assistant to the Police Chief, Information Systems Manager, Water Department Manager, Building Department Manager, Building Department Assistant, Code Enforcement Officer, and Senior Citizens Coordinator,
12. The unit consists of long term, experienced employees.
13. The petition for recognition was prompted by the uncertainties faced by this sector of the City's workforce as the long term mayor (32 year tenure) was no longer running for election in November, 2007. There were eight candidates in the election for mayor. The employees believed that their interests would best be protected by a bargaining representative.
14. The City did not oppose the petition for recognition.
15. The contract when ratified will be retroactive to 3-1-08 by agreement of the parties.
16. This is the first contract between the parties.
17. In 2007, the statewide wage increase averaged close to 3%. The trends for 2008 show this percent to be unchanged.
18. The unit received 4 % in wage increase in January 2008. The parties did not bargain about this increase. There is no issue as to the appropriateness of the increase. This increase matched that granted to other City employees.
19. Both parties agree that a 4% increase is above the norm currently in Franklin County and throughout Ohio. <sup>2</sup>
20. For municipalities in and around Bexley, it appears that Bexley wage rates are at or very near the top of like classifications.
21. There are a number of municipalities in Franklin County that have PERS employer pick up. All of these are AFSCME units: Columbus City; Grove City; Columbus Health Department; Columbus Regional Airport Authority.

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<sup>2</sup> Only Westerville in Franklin County had a 4% increase for its FOP unit.

22. There was no evidence that any of these units mentioned in #21 achieved this benefit during the term of its first agreement.
23. There are a number of municipalities in Franklin County that do not receive PERS pick up. These are: Westerville; Whitehall; Reynoldsburg; Pickerington; Dublin and Gahanna.<sup>3</sup>
24. No central Ohio cities provide a PERS pick up and a 4% wage increase.
25. Local 3838 did not receive employer PERS pick up language at its initial agreement with the City. The benefit was introduced and enhanced over the course of several years of negotiations and contracts.
26. The City has no recruitment issues. The majority of the unit's employees are long term employees.
27. The parties had reached a tentative agreement without PERS pick up. The PERS pick up was first proposed by the Union after it rejected the TA in a membership vote.
28. State law currently sets the employer PERS contribution at 10%.
29. The Union proposes employer pick up at 8.5%, with an option of up to 10%.
30. The other AFSCME unit receiving a PERS pick up receives the benefit in lieu of and in an amount equivalent to the value of annual wage increases employees otherwise would have received. Thus, the other unit does not receive both a 4% and employer PERS pick up; there is a set off.
31. The language proposed by the Clerical/Technical unit is identical to that found in the current Local 3838 agreement.
32. The Local 3838 agreement and this unit's agreement will expire on the same date.
33. No other bargaining unit in the City other than Local 3838 receives the employer PERS pick up benefit.
34. The non represented employees do not receive PERS employer pick up.

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<sup>3</sup> Both parties used Franklin County for its comparables as to the PERS pick up. Both parties generally limit references to wage comparables to the Columbus contiguous counties, except for a single employer provided reference to Wood County in northwestern Ohio.

### **ISSUE NO. 1. Employer PERS PICK UP**

The Union seeks parity with Local 3838. Local 3838 has a contract provision that states as follows:

#### **Section 15.7 PERS Pick-UP**

The Employer shall pick up the full eight and one-half percent (8.5%) of the employee contribution. Moreover, the parties agree that, due to the benefit provided under this section, hourly rates of pay for the Bargaining Unit members will be lower at the expiration of this Agreement than they would have been if hourly wage increases had been granted, and the Employer will be under no obligation to grant hourly increases in a succeeding agreement to make up for the shortfall.

During the term of this Agreement, the Union may notify the City to increase the City's pick up of the bargaining unit membership's employee contribution, which increase will be offset by a corresponding reduction in the bargaining unit members' salaries. In order to effectuate this increased pick-up, the Union must provide the City with a written request at least one month prior to the intended effective date of the increased pick-up. If the Union provides the City with a request for an increase in the pick-up, such pick-up will apply to all bargaining unit members, and in no event may individual employees have the authority to accept or decline the increased pick-up and corresponding reduction in salary.

The Union seeks parity with its sister local 3838, and urges adoption of the above language in its initial agreement. The Union bases its contention that the Employer PERS pick up is reasonable given that the other AFSCME unit has enjoyed the same benefit for several contracts. It points out that the City has the ability to pay for the benefit, and has never argued to the contrary. Parity is a recognized criterion under fact finding guidelines.

The City counters that the Union's request is unreasonable, in light of the following:

- Local 3838 only achieved this benefit after multiple contract negotiations. It did not receive this benefit in its first agreement with the City.
- An 8.5% pick up on top of a 4% wage increase for 2008-2009 is totally outside the parameters of comparables. It is a windfall, not justified by wage inequities or any other factor.
- If the fact finder were to give serious consideration to the Union's request, the only satisfactory and reasonable way to accomplish the desired benefit

would be to offset the recently granted 4% increase. The City suggests that any recommended reduction in the wage increase to address this demand would create dissension, result in administrative difficulties and not serve the parties' best interests.

- It concedes that ability to pay is not a City concern, but maintains that the Union request is completely out of synch with its sister's local's bargaining history.
- The City has represented in bargaining and in fact finding that it will be willing to bargain over this benefit in the next round of negotiations.
- As the City has made a "gentleman's agreement" to do joint bargaining with both AFSCME locals next year, the climate will be warmer for a PERS pick up proposal. <sup>4</sup>

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). <sup>5</sup> Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record. <sup>6</sup>

The fact finder relied on both parties' evidence that comparables in Franklin County and state wide wage increases were generally below the 4% received by this white collar unit. The general trend in Ohio has been 3% for the past several years. There was no evidence that equity increases would justify the add on of the PERS benefit. Employee wages in the unit are at or near the top of like positions in the area.

The Union argument regarding parity has merit, but must be placed in a historical context. It did not dispute the City's arguments that the PERS language in its Local 3838 contract evolved over a series of contracts. To follow the parity argument to its full

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<sup>4</sup> The parties recognize that these statements about the next round of bargaining are not part of any written agreement. Nor can they be part of official recommendations of a fact finder. However, given the parties' historically cordial and cooperative relationships, it is expected that the "commitments" will be honored.

<sup>5</sup> The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

<sup>6</sup> In this case, the lawful authority of the public employer was not in dispute on any issue submitted to fact finding. The effect on public services was not in dispute on any of the matters submitted to fact finding. The parties did not present the fact finder with any stipulations. There were no past collective bargaining agreements. Ability to pay and administer was not disputed, but did not trump the other traditional factors and the comparables. Public interest would be ill served by recommending a windfall of a 4% increase and PERS employer pick up at this juncture.

meaning, parity would mean that even if a local had evolved its language over a time span, any new labor organization would be able to take a “today” snapshot and argue parity demanded like treatment. The City’s argument says, parity may likely be achieved; we are not opposed to it philosophically; but not now, and not 100% all at once.

It seems to the fact finder that the Union’s parity argument is weakened by the fact this is a first contract. The “reasonableness” of the parity argument is further impacted negatively by the large increase that would result if both the 4% and 8.5% pick up were in place at this moment, with absolutely no showing that comparables existed or that there were past inequities.

The bargaining unit achieved many tangible benefits in this first agreement: both economic and non economic. The employees received arbitration and grievance mediation; PEOPLE check off; labor management meetings; seniority; longevity; a variety of leaves (bereavement, sick, vacation, injury ); clothing allowances; a vacancy and promotion procedure; union leave; and numerous other provisions. While the record did not indicate how many of these benefits were pre-existing, it is clear that the grievance procedure, union leave, labor management, seniority and People check off were not.

Although the employees may have enjoyed a relatively harmonious relationship with management in the past, a union agreement with defined benefits and a definite just cause process achieved through negotiations is a significant change in the parties’ relationships. The employees have additional and different statutory protections than it had previously. Its rights are now secured under ORC Chapter 4711. A labor agreement provides stability that benefits both parties and regulates conduct in the workplace by agreement, not personality or caprice. Considering the record, the relationship of the parties, the comparables, and the other relevant statutory factors, the Union’s proposal is not appropriately recommended *at this time*.

**Recommendation**

**It is recommended that the parties approve the language in the tentative agreement; i.e. Article 15 sections 15.1-15.6. It is recommended that there be no Employer PERS pick up in the initial agreement.**

Respectfully submitted,



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### **Certificate of Service**

An original and true copy of the fact finder report were sent by ordinary US mail on the State Employment Relations Board, 65 East State Street, 12<sup>th</sup> floor, Columbus, Ohio 43215; on David Blaugrund Esq. 300 West Wilson Bridge Road, Worthington, Oh 43085 and LeRoy Herd, Staff representative, 6800 North High Street, Columbus, Oh 43085-7974 on June 2, 2008. An electronic copy was also sent to the parties' representatives.



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Sandra Mendel Furman, Esq.