

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT FINDING 2009 JUL -6 P 12: 11

BETWEEN

AFSCME OHIO COUNCIL 8, AFL-CIO
LOCAL 475

AND

THE CITY OF HAMILTON

SERB CASE # 08-MED-10-1244

ADVOCATE FOR THE UNION:

Roberta Skok, Regional Director
AFSCME OHIO COUNCIL 8, LOCAL 0475
6800 North High Street
Worthington OH 43085-2512

ADVOCATE FOR THE EMPLOYER:

Timothy Werdmann
Assistant Law Director
CITY OF HAMILTON
345 High Street
Suite 710
Hamilton OH 45011

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INTRODUCTION

AFSCME Ohio Council 8, Local 475 (hereinafter "Union") represents the bargaining unit, and the Employer is the City of Hamilton (hereinafter "Employer", "City." The bargaining unit is comprised of approximately thirty-eight (38) employees, both skilled and unskilled, in the departments of Public Works and Parks & Recreation.

The parties bargained for a successor agreement in good faith and eventually reached a complete tentative agreement, which was subsequently ratified by the Union but not the City. Reaching impasse, the parties progressed to fact-finding in accordance with ORC 4117 with one (1) unresolved issue, Rate/Class Adjustments (wages). A mediation/conciliation hearing was held on June 22, 2009 in Hamilton, Ohio. The fact-finder initially worked with the parties to seek a mediated solution to this impasse, but after a short period of time it was determined that a hearing needed to be held that same day during which the parties submitted their evidence and arguments.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

OVERALL RATIONALE FOR DETERMINATIONS

While there appears to be initial signs of gradually rising optimism regarding the national economy, Ohio's economy remains uncertain, particularly in light of the state of the domestic auto industry, its multitude of

suppliers, and in general the losses of thousands of jobs in Ohio in recent years. The state of Ohio continues to struggle to find ways to fund the many obligations it shoulders such as Medicaid costs, education, job growth, and a myriad of other pressing economic demands. The Governor and the Ohio State Legislature continue to ponder the prospect of the next biennium budget, which will require greater sacrifices. However, it is improper to generalize when it comes to fact-finding. Each public entity in Ohio is unique in its leadership, constituency and economic circumstances. The City of Hamilton, while certainly subject to forces outside of its control, needs to be considered within the context of its own unique state of affairs. After carefully considering the facts and evidence and applying all the statutory criteria stated above, the following recommendations are made in the areas of tentative agreement and in the issue in dispute.

Issue 1	Article XXX	Rate/Class Adjustments
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Issue Rationale:

The City is seeking a wage freeze for the entire term of the Agreement. The City argues that the City's General Fund budget is in a precarious situation, which is causing it to examine with the intent of reducing expenses. And, while the City admits that only a few individuals in the bargaining are paid out of the General Fund, it is concerned about any detrimental effects a wage increase would have on other City employees.

The Union is seeking a four percent (4%) increase for each year of the Agreement, or a total of twelve percent (12%) over three years. The Union argues that the City's proposal for a three year wage freeze is unreasonable in light of wage increases of eleven percent (11%) for the FOP unit, nine percent (9%) for the IAFF unit and six percent (6%) for the Clerical Unit. The Union points out that each of these groups' salaries and benefits are paid completely out of the General fund. The Union also cites the fact that in recently concluded negotiations with the IBEW unit, the negotiated wage increase was eleven percent (11%) over three years. (Union Ex. 3)

The evidence indicates that the three (3) year wage settlements for other bargaining units, while in the 6% to 11% range, were negotiated during prior "snapshots in time" during which there were serious problems with national, state, and local economies in Ohio and elsewhere beginning with a series of rather dramatic economic events (on Wall Street, banking, housing, auto, etc.). These events became more widely reported beginning approximately one year ago; however, their impact on local economies remained largely uncertain until more time had passed. Currently the sobering reality of this unprecedented period of growing economic uncertainty in modern times has many municipalities in Ohio seeking to take unprecedented steps to cope with a foggy future. According to evidence presented by the City, the unemployment rate increased from approximately 5.7% in March of 2007 to approximately 10.7% in March of 2009. (City Ex. E) The City of Hamilton leads all cities in Butler

County in the number of foreclosures. (City Ex. C) In the year 2008, like many cities in Ohio and the United States, Hamilton had lost a substantial number of jobs. (City Ex. D) A memo from the City's Finance Director outlines the extent of problems with the General Fund. (City Ex. E) The most recent updates on City finances are contained in City Ex. F. When viewed in conjunction with City Ex. G and City Ex. H it is clear that the City has a sound basis to be concerned about the combination of declining revenue (down approximately 4%) and rising costs to the General Fund.

However, in this particular matter the evidence indicates any impact to the General Fund in terms of wage increases to this bargaining unit has been largely mitigated by the fact most of the bargaining unit employees are not paid out of the General Fund. Moreover, during negotiations the Union proposed and the City agreed to move two additional employees out of the General Fund and to the Street Maintenance Fund, which according to the City's own documents, is in better financial condition than the General Fund. (City Ex. K) The parties' agreement to move two employees from the Recreation Department to the Street Department will result in a savings to the General Fund of approximately \$245,000 in wages over the next three years. (Union's Pre-hearing Statement and City Ex. I) This estimate of savings was not challenged by the City. Moreover, this move, according to the Union, leaves only one bargaining unit member under the General Fund. According to the

evidence and testimony, the approximate cost of a 1% wage increase to the bargaining unit is \$25,000 per year in wages.

Given the above analysis, the City's argument that it must proceed with caution when it comes to the impact of wage increases on the General Fund is not lost on this fact-finder. Prudence in the face of economic uncertainty is rational. And, as we enter the second half of 2009 I find the Union's proposal of twelve percent (12%) over three years to be out of line with current economic reality. Yet, in applying the statutory criteria to this matter, the real impact of a wage increase on the City must be reasonably assessed. The reality indicates a modest increase in wages, similar to what was recently recommended by a fact finder for AFSCME Local 3169 on April 17, 2009, is supported by the facts and would have minimal impact on the General Fund over the next three years.

(Union Ex. A)

Determination:

Article 30 – Rate/Class Adjustments

Section 1. Except as provided in Section 4 below, effective at the beginning of the pay period, which includes January 15, 2009 a **two percent (2%)** general wage adjustment increase shall be applied to all pay steps within ranges to which Bargaining Unit classes are assigned. A five cent (\$.05) per hour increase shall be added to each hourly rate at Step 10 only.

Section 2. Except as provided in Section 4 below, effective at the beginning of the pay period, which includes January 15, 2010 a **two percent (2%)** general wage adjustment increase shall be applied to all pay steps within ranges to which bargaining unit classes are assigned. A five cent (\$.05) per hour increase shall be added to each hourly rate at Step 10 only. Provided further (and except as provided in Section 4, below), that in 2010, if any other bargaining unit that has employees paid from the City of Hamilton General Fund negotiates a general wage increase of greater than 2% that take effect in 2010, that same percentage wage increase will be applied to the members of this bargaining unit.

Section 3. Except as provided in Section 4 below, effective at the beginning of the pay period, which includes January 15, 2011 a **two percent (2%)** general wage adjustment increase shall be applied to all pay steps within ranges to which bargaining unit classes are assigned. A five cent (\$.05) per hour increase shall be added to each hourly rate at Step 10 only. Provided further (and except as provided in Section 4, below), that in 2011, if any other bargaining unit that has employees paid from the City of Hamilton General Fund negotiates a general wage increase of greater than 2% that take effect in 2011, that same percentage wage increase will be applied to the members of this bargaining unit.

Section 4 For the term of this agreement, the general wage increases identified in Sections 1, 2, and 3 of this Article shall not apply to the following classifications: Class No. 117.5 Auto Equipment Operator 1 (Parks); Class No. 125.3 Auto Equipment Operator 11 (Parks); Class No. 104.3 Building Service Worker (Parks); Class No. 631 Parks Maintenance Worker 1.

During the term of this agreement, employees in the above referenced classifications will be eligible for certification pay of \$250 annually for each of the following certifications: Pool & Spa Inspector; Playground Inspector, and Pesticide Applicator's License. The total annual certification pay for any such employee shall not exceed \$750 annually. Such payments shall be made upon execution of the agreement in 2009, and annually thereafter in January of 2010 and 2011.

Section 5 Direct Deposit

If at any point during the term of this agreement greater than 75% of the total employee population of the City is enrolled in direct deposit, the City shall have the ability to require all members of this bargaining unit to enroll in direct deposit.

TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 2nd day of July 2009 in Portage County, Ohio.



Robert G. Stein, Fact-finder

City of Hamilton, Ohio
Employer

- and -

Fact-finder: Robert Stein

AFSCME, Ohio Council 8, AFL-CIO
and AFSCME Local 0475

Case No. 08-MED-10-1244

UNION'S POSITION STATEMENT

1. Name of party:

AFSCME Ohio Council 8, AFL-CIO and
AFSCME Local 0475

Name and address of principle party:

Roberta Skok, Regional Director
AFSCME Ohio Council 8
6800 North High Street
Worthington, OH 43085-2512
Phone: (614) 841-0595
Fax : (614) 430-7974

2. Description of the bargaining unit is as follows:

The approximate number of employees in the bargaining unit is 38 in a number of classifications.

3. A copy of the current bargaining agreement between the parties is attached.

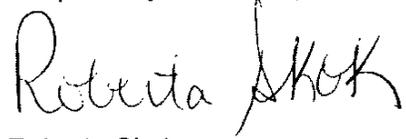
4. The following article remains unresolved:

ARTICLE XXX - RATE/CLASS ADJUSTMENTS

The negotiating teams came to a tentative agreement on the enclosed article. City Council rejected and now the Union's proposed language on wages is enclosed along with a brief explanation of the Union's position on the issue.

In addition to making recommendations on the above mentioned article, the Union would ask that the Fact Finder adopt the language of the parties previously executed tentative agreements and recommend no language change for any remaining articles in the successor agreement.

Respectfully Submitted,

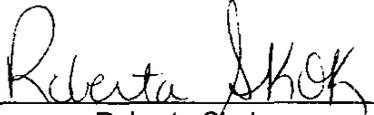
A handwritten signature in black ink that reads "Roberta Skok". The signature is written in a cursive style with a large, stylized initial 'R'.

Roberta Skok
Regional Director
AFSCME Ohio Council 8
6800 North High Street
Worthington, OH 43085
614-841-0595 (office)
614-430-7974 (fax)
roberta.skok@gmail.com

CERTIFICATE OF SERVICE

A copy of the foregoing was served via US regular mail on the 15th day of June 2009, to the following:

Timothy Werdmann
Assistant Law Director
City of Hamilton, Ohio
345 High Street, Suite 710
Hamilton, OH 45011



Roberta Skok

ARTICLE XXX - RATE/CLASS ADJUSTMENTS

RATIONALE STATEMENT

In the current tentative agreement with the City we agreed on two percent (2%) effective January 15, 2009, January 15, 2010 and January 15, 2011. A six percent (6%) wage increase for the three (3) year duration. We also agreed to a "me to" clause that if any other bargaining unit that has employees paid from the City of Hamilton General Fund negotiates a general wage increase greater than two percent (2%) of each year, it would take effect for our bargaining unit also.

The Union ratified the tentative agreement and City Council rejected. Therefore taking us to fact finding on this issue. You will see that during this set of negotiations, the Union has proposed moving two (2) employees from the Recreation Department over to the Street Department saving the City's General Fund two hundred forty five thousand and forty dollars (\$245,040.00) in wages plus benefits over the next three (3) years. We only have one employee now that is paid out of the General Fund. All other employees are paid from other funding sources.

The City states they have a short fall in the general fund but other funding levels are fine.

Attached is the Union's new proposal requesting four percent (4%) for each year of the contract for a total of twelve percent (12%) for the duration. The Union feels that City Council is being unreasonable by rejecting our tentative agreement of two percent (2%) each year and proposing zero percent (0%) now for each year of the contract. This makes no sense when they just approved six percent (6%) pay increase over three (3) years for the Clerical unit, eleven percent (11%) pay increase over three (3) years to the employees covered by FOP, a nine percent (9%) increase to the employees represented by the IAFF and an eleven percent (11%) increase for those classified as drivers under IAFF CBA, and each one these groups' salaries and benefits are one hundred percent (100%) General Fund.

In the City's recent set of negotiations with the employees represented by IBEW, they settled on an eleven percent (11%) increase (2008 - 5%, 2009 - 3%, 2010 - 3%) in hourly wages.

Based on AFSCME and the City's calculations, a projected four percent (4%) proposal for the bargaining unit would have no impact to the General Fund.

Below is a chart comparing the recent wage adjustments from the City of Hamilton's other Collective Bargaining Agreements.

LOCALS	1st Yr	2nd Yr	3rd Yr
AFSCME LOCAL 0475	0%	0%	0% City's Proposal
AFSCME Local 3169	2%	2%	2%
AFSCME Local 3785	2.5%	3%	3% Average
IAFF	3% (additional 2% for drivers)	3%	3%
IBEW	5%	3%	3%
IUOE Local 20	3%	3%	3%
FOP	4%	3%	4%
OPEIU Local 98	3%	3%	3%

BEFORE THE OHIO STATE EMPLOYMENT
RELATIONS BOARD

AFSCME, OHIO COUNCIL 8	:	Case No.: 08-MED-10-1244
LOCAL 475	:	
Employee Organization	:	
and	:	EMPLOYER'S PRE-HEARING STATEMENT
	:	
CITY OF HAMILTON, OHIO	:	(Factfinder Robert Stein)
Employer	:	
	:	

In accordance with O.A.C. § 4117-9-05 (F), the City of Hamilton submits the following pre-hearing statement:

1. <u>Name of Party</u>	<u>Name of Representative</u>
City of Hamilton, Ohio 345 High Street 7 th Floor Hamilton, OH 45011 (513) 785-7000 (513) 785-7010 (fax)	Timothy Werdmann Assistant Law Director City of Hamilton 345 High Street Suite 710 Hamilton, OH 45011 (513) 785-7007 (513) 785-7187 (fax)

2. The bargaining unit consists of approximately 38 employees in a number of classifications. Their responsibilities consist of skilled and unskilled labor in the Departments of Public Works and Parks & Recreation within the City of Hamilton, Ohio.

3. A copy of the current collective bargaining agreement between the parties is attached.

4. The following article remains unresolved:

Article XXX – Rate/Class Adjustments

The City's proposed language on the above-referenced article, along with a brief explanation of the City's position on the issue is enclosed.

In addition to making recommendations on the above mentioned article, the City of Hamilton would ask that the factfinder adopt the language of the parties' previously executed tentative agreements and recommend no language change for any other remaining articles in the successor agreement.

Respectfully submitted,

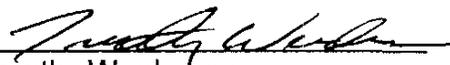
A handwritten signature in black ink, appearing to read "Timothy Werdmann", written over a horizontal line.

Timothy Werdmann
Assistant Law Director
City of Hamilton, Ohio
345 High Street, Suite 710
Hamilton, Ohio 45011
(513) 785-7007
Fax (513) 785-7187
werdmant@ci.hamilton.oh.us

CERTIFICATE OF SERVICE

A copy of the foregoing was served by Overnight Mail on the 18th day of June 2009, to the following:

Roberta Skok
Staff Representative
AFSCME, Ohio Council 8
6800 N. High Street
Worthington, OH 43085


Timothy Werdmann

Article XXX – Rate/Class Adjustments

Rationale Statement

The City is proposing that current wage levels be maintained for the term of this Agreement. The City's General Fund is in a precarious situation, and the City is looking to decrease expenses in the General Fund, and in all other City operations. While this unit contains few individuals who are paid 100% from the General Fund, any across-the-board wage increase is going to have a detrimental affect on the City at a time when the City is asking all other employees to take a wage cut or a wage freeze.

The Union's factfinding wage proposal is for a general wage increase of four percent (4%) in each of the three years of a proposed Agreement. The City, due to the current economic climate, has implemented an across-the-board wage cut of approximately five percent (5%) for all non-union personnel – employees who have not received a general wage increase since July of 2007. The City has also recently negotiated wage concessions from the FOP Lodge 38 bargaining units, and is attempting to negotiate additional concessions from the IAFF and other bargaining units. Given the City's and, for that matter, the nation's current economic situation, the City is not in a position to grant such increases to any employee group when the City is attempting to cut expenditures to stave off Fiscal Watch and/or Fiscal Emergency.

The parties did previously reach a tentative agreement that incorporated a two percent (2%) general wage increase that was voted down by a majority of City Council. The City's economic situation has only worsened since that time. With no improvements evident on the horizon, the City is compelled to request a wage freeze for this bargaining unit.

ARTICLE XXX.

RATE/CLASS ADJUSTMENTS

~~Section 1. **The pay ranges of all bargaining unit employees will be frozen at current levels effective January 15, 2009, and continuing for the term of this agreement.** Effective at the beginning of the pay period which includes January 15, 2006, a three percent (3%) general wage adjustment increase shall be applied to all pay steps within ranges to which Bargaining Unit classes are assigned. A five cent (\$.05) per hour increase shall be added to each hourly rate at Step 10 only.~~

~~Section 2. Effective at the beginning of the pay period which includes January 15, 2007 a three percent (3%) general wage adjustment increase shall be applied to all pay steps within ranges to which bargaining unit classes are assigned. A five cent (\$.05) per hour increase shall be added to each hourly rate at Step 10 only.~~

~~Section 3. Effective at the beginning of the pay period which includes January 15, 2008, a three percent (3%) general wage adjustment increase shall be applied to all pay steps within ranges to which bargaining unit classes are assigned. A five cent (\$.05) per hour increase shall be added to each hourly rate at Step 10 only.~~

Section 2. Direct Deposit

Effective upon the execution of this Agreement, all employees covered by this Agreement shall be required to enroll for direct deposit.

For the City of Hamilton:

For the Union:

Date Signed

Date Signed