



STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT-FINDING 2009 MAY 18 A 10: 51
BETWEEN

| | | |
|--------------------------------|---|---------------------------|
| CITY OF YOUNGSTOWN |) | |
| |) | CASE NO. 2008-MED-10-1273 |
| |) | |
| AND |) | |
| |) | <u>FINDINGS</u> |
| |) | AND |
| AMERICAN FEDERATION OF STATE) |) | <u>RECOMMENDATIONS</u> |
| COUNTY, MUNICIPAL EMPLOYEES) |) | |
| OHIO COUNCIL 8, LOCAL 2312) |) | |

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE UNION

James M. Adams, Jr.
AFSCME Staff Representative

Cicero Davis
AFSCME 2312 President

FOR THE CITY

Michael D. Esposito, Esq.
Account Manager Clemans, Nelson & Associates

Iris Guglucello
Director of Law City of Youngstown

SUBMISSION

This matter concerns fact finding proceedings between the City of Youngstown (hereinafter referred to as the Employer or City) and the American Federation of State, County, and Municipal Employees, Local 2312 (hereinafter referred to as the Union or AFSCME). The State Employment Relations Board (SERB) duly appointed the undersigned as fact finder in this matter.

Fact finding proceedings were held on April 22, 2009. The proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceedings, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit consists of approximately 110 employees in various departments of the City including Parks; Civil Service; Community Development; Mayor's Office; Finance; Planning; Police and Fire Departments; Public Works; Health; and Law Department.

This fact-finder in rendering the following findings of fact and recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117(G)(6)(7). Therefore, the following recommendations on the outstanding issues are hereby submitted.

1. LAYOFF AND RECALL, ARTICLE 12

The City proposes to revise this provision in order to clarify that it preempts civil service statutes if a reduction in force becomes necessary. The Union's proposal is to retain current language.

The City has proposed to revise the Layoff and Recall article so as to address what it views as a major gap within the current language, the existence of external statutory procedures that may interfere with the administration of the parties' negotiated language. It avers to the Union's claim that there is no problem with the current language, but points to the Ohio Supreme Court's decision in State ex rel. Ohio Association of Public School Employees v. Batavia Local School Dist. Bd. of Ed. (2000) 89 Ohio St.3d 191. Based on this decision, there are demonstrated instances throughout the state including City of Campbell v. IAFF, Local 2998 (McIntosh) AAA 53 390 00042 07 and Dryden v. New Philadelphia Civ. Serv. Comm., 2005-Ohio-3919 where a labor organization has bargained a layoff procedure and then attempted to play "gotcha" with an Employer by asserting rights (other than those in the contract) to avoid a layoff or reduction.

All of the City's agreements have addressed this issue, and recently, in SERB Case No. 06-MED-09-0943, Fact Finder Michael Paolucci opined that "[d]ue to the impact of Batavia, it is not reasonable to allow the bargaining unit to retain the rights as negotiated under the Agreement, yet also have the potential of receiving rights under Ohio statutes because the Agreement might be found to be lacking specificity." The City is merely asking for a clear, unambiguous commitment to the contractual layoff and

recall procedure. It cannot afford, particularly where reductions may be looming, to have to deal with disputes over whether it properly followed the layoff procedure, much less which procedure to follow itself.

The Union believes that there is no reason to accept the City's proposal to revisit and revise the layoff procedure. It states that reductions have occurred in the past and there has not been an issue. Thus, there is no reason for a language change. The Employer's concerns are mere "hypotheticals" that have occurred with other unions, not AFSCME and not this local.

Discussion: This fact-finder has determined that the Employer's proposal should be adopted because it is reasonable and consistent with layoff provisions set forth in other City bargaining agreements. As Fact Finder Paolucci noted, due to the impact of Batavia, it is unreasonable to allow an ambiguity to exist as to whether or not a labor contract should control or whether or not state statute is applicable. The parties to a labor contract negotiate its provisions to be followed and adhered to, not to be undone by some challenge based on external law that something is not included in the contract procedure, that it lacks specificity, or worse yet, the procedure is at odds with the statute at issue.

While the Union notes that there have not been problems with current language, the fact is that it very well could become an issue at a time when the parties can ill afford to engage in disputes over what procedure should be followed if a layoff becomes necessary. Accordingly, the Employer's position is adopted and recommended.

RECOMMENDATION

ARTICLE 12 LAYOFF AND RECALL

Section 1. *It is the intent of the parties, through this article, to establish an objective procedure by which a reduction in force may be accomplished, should the need arise, and supersede the provisions of ORC 124.321 to 124.328, OAC 123: 1-41-01 to 123: 1-41-22, and all local rules and regulations of the City of Youngstown Municipal Civil Service Commission governing work force reductions.*

Section 2. Notice. *Whenever the Employer determines that a reduction in force (i.e., layoff or job abolishment) is necessary, the Employer shall notify the affected employee(s) in writing at least fourteen (14) calendar days prior to the date of the reduction. Such notification shall include the reasons behind the Employer's decision to initiate the layoff, abolishment, or reorganization.*

Section 3. Procedure. ~~4.~~ When the City determines a reduction in the working force is necessary, employees shall be laid off, ***within the affected classification***, in the following order:

- A. Part-time, temporary, intermittent, and seasonal employees;
- B. Full-time employees who have not completed their probationary period;
- C. Full-time employees who have completed their probationary period.

~~2-A.~~ Employees shall be laid off in accordance with the above order on the basis of ~~Citywide~~ ***total*** seniority within ***the affected classification within*** their ~~unit~~ ***department***. An employee who is laid off shall be able to bump another employee, ***within their department***, with less ***total*** seniority in an equal or lower rated classification within the same ~~unit~~ ***classification series or another equal or lower rated classification***.

Any employee bumping ~~within his/her own unit~~ is limited to a total of two (2) bumps. ~~B.~~ In the event an employee is unable to "bump" a ~~lesser seniority employee in an equal or lower rated classification~~ within the same ~~unit~~ ***department***, the employee shall be able to exercise his ***total*** seniority to bump ~~the least senior~~ ***an*** employee ***with less total seniority*** in an equal or lower rated classification in another ~~unit~~ ***department that is covered by this Agreement***. ***An employee bumping within his department must have the ability to perform the job into which he bumps. An employee will be given ten (10) working days to demonstrate this ability to perform the job. The ability to bump outside of the department, however, under this article is conditioned upon the employee having provided he has the immediate ability to perform the job. It is understood that an employee cannot bump up into a higher rated classification. Failure of an employee to exercise bumping rights shall constitute a waiver of those rights.*** ~~C.~~ Any employee who is bumped out of ~~the~~ ***a*** classification shall have the same right to exercise his seniority in the above-prescribed procedure.

~~For the purpose of this agreement, a job abolishment is construed to be a layoff. (SEE SECTION 2) D. Failure of an employee to exercise his bumping rights shall constitute a waiver of those rights. (SEE SECTION 3)~~

Section 4. Identical Seniority Dates. ~~3.~~ In the event employees have the same ~~Citywide total~~ seniority date, the following tie breakers will be used:

- A. Civil service test scores;
- B. Sign-up number on test application list;
- C. In the event all tied employees do not have a civil service test score and a test application number, alphabetical order will then apply.

Section 5. Effects Bargaining/Alternative Discussions. ~~4.~~ ~~Before any bargaining unit employee is given notice of layoff under Paragraph 2 above, Upon request of the Union, the City and Union will meet immediately prior to the effective date of any reduction for the purpose of attempting to find an available job within the bargaining unit in accordance with the layoff procedure, specifically Paragraph 2. The Union shall receive a copy of all such layoff notices. to discuss the effects of the reduction on bargaining unit members and to explore any alternatives that may be available to a reduction in force.~~

~~5. All regular full time employees shall be given a minimum of five (5) working days advance notice of layoff or job abolishment indicating the circumstances which make the layoff necessary, circumstances or reorganization. (SEE SECTION 2)~~

Section 6. Vacation Payout Request. ~~6.~~ In the event an employee is laid off, he may, upon request, receive payment for earned but unused vacation as quickly as possible.

~~7. A laid off employee shall continue to accumulate seniority subject to Article 9, Section 6.~~

Section 7. Police Clerk Classifications. ~~8.~~ For the purpose of layoff, the classifications of Police Clerk 1 and 4 will be considered one classification and employees will be laid off from or bumped out of this classification on the basis of their Citywide seniority. Any employee bumping into this classification will be paid at the rate of Police Clerk 1 until such time as that employee has an aggregate of eighteen (18) months as a Police Clerk 1 at which time the employee will be raised in pay to Police Clerk 4. The eighteen (18) month requirement will apply to those who have bid into the classification of Police Clerk. Moreover, all employees must serve a total of eighteen (18) months as a Police Clerk 1 before being automatically raised in pay to Police Clerk 4.

Section 8. Pay Grades within Classifications. For purposes of bumping, an employee that bumps into a lower classification within the applicable classification series or another classification shall be placed at the appropriate time based pay step, if applicable, within the classification that he bumps into. This means that an employee having no service within the classification will be placed at the entry level step and an employee with prior service will be placed at the applicable step equivalent to the prior service.

Thereafter, he will receive step based increases, where applicable, in accordance with the amount of time that he is required to serve in that classification's step system prior to receiving an increase.

~~9. Laid off full time employees, in the order of their seniority, may elect to bump into a part time position, if said position(s) is to be retained, provided they have more City wide seniority. If a laid off full time employee elects to take a layoff rather than exercise his/her right to displace a part time employee, he/she shall be considered laid off employee for purposes of unemployment compensation.~~

Section 9. Seniority and Layoffs Recall. ~~10. The City shall recall employees from layoff by classification. Recalls from layoff shall be made in the reverse order of the layoff provided that the employee recalled has the ability to perform satisfactorily the duties for the job for which he is recalled. Employees transferred to other positions as a result of layoffs shall have a preferred right to return to their former position. Employees being recalled shall be notified to report for work by notice from the Employer sent by mail to the employee's address which he has given to the Employer for such purpose. Such employee shall have five (5) working days from the date of receipt of such notice to report to work. The employee shall be responsible for keeping the Employer informed of his current address. Employees shall be recalled from layoff to their classification or be returned to their former classification (if they have bumped) ahead of job posting or hiring for that classification. A bargaining unit member laid off under this article shall remain on the layoff list according to the following schedule:~~ ~~11. The length of the recall period shall be as follows:~~

| <u>Years of City Service</u> | <u>Recall Period</u> |
|--|-----------------------------|
| 0 but less than one (1) year | Length of service at layoff |
| One (1) year but less than ten (10) years | One (1) year |
| Ten (10) years but less than twenty (20) years | Two (2) years |
| Twenty (20) or more years | Three (3) years |

When the Employer determines that it wishes to recall laid off members of the bargaining unit, the City shall recall from that list in reverse order in which the member was laid off. Employees transferred to other positions as a result of layoffs shall have a preferred right to return to their former position. Employees shall be given seven (7) calendar days advance notice of recall and such notice shall be sent to the employee's last address on record. It shall be the responsibility of the employee(s) to keep the Employer advised of his current address and maintain any required licensure or certification required for his position. Employees who refuse recall shall lose all seniority and recall rights.

2. WAGES, ARTICLE 23

The City has proposed that bargaining unit members receive no increase for years one and two of the Agreement, but that a wage re-opener for the final year of the agreement be provided. The Union proposes a 4% increase in year one and a re-opener for the second and third years.

The Union argues that its wage proposal is more reasonable under the circumstances. It points out that this unit is the last to finalize its contract with the City in this bargaining cycle. All other bargaining units have already received increases in the 1st year of their agreements as follows: AFSCME 2726 2.5%, USWA 2.50%, IBT 2.0%, YPA 3.0%, YPRO 3.0%, and IAFF 3.0%. The Union's request for a 4.0% increase and re-opener is more than equitable since all of these "first year of the cycle" increases were followed by additional increases which it is being asked to forego because of current economic conditions. It also notes that employees will now be required to make substantial increases in insurance contributions, and as a result its members in doing so are entitled to a wage increase as an offset.

In support of its position, the City cites its projected deficit and decline in income tax revenue for the current year. It also points to demographic statistics which show that the City's population is one of the poorest in the state which limits its ability to absorb unreasonable wage demands. In addition, SERB's wage data shows that this unit has fared well in comparison to other similar bargaining units. The City contends that all of this data supports its assertion that it can ill afford to grant any increase much less the 4% that the Union has requested.

Both parties addressed the current state of the economy which has become a daily topic of conversation during the past year. Ohio's economy remains uncertain at best, as does the financial outlook for many Ohio public employers. As part of the most recent State budget, the Governor outlined the considerable magnitude of Ohio's revenue shortfall both in the current and next biennium budgets, and the necessity of having to take decisive action to reduce costs in order to balance the state's budget. This cost cutting would likely have resulted in the layoff of state employees, and in an attempt to avoid this, state employees have agreed to wage freezes and unpaid furloughs. Adding to this backdrop is the overall impact of a national economy in a prolonged recession with little certainty of its length or breadth. Recently, the national unemployment rate reached a fifteen year high of 6.7% (with a loss of over 500,000 jobs nationally in the last month alone). Approximately 225,000 Ohio jobs, many of which were high paying manufacturing jobs, have been lost during the past ten years. A large number of these jobs were lost to outsourcing. Moreover, the woes of the domestic auto industry and its potential direct and secondary ripple effect on jobs in Ohio looms as the auto industry seeks congressional loan relief. Compounding the problem of job losses is the recent credit crunch and its impact upon housing values.

Although the overall impact of these serious financial conditions on the City of Youngstown may not be quite as severe, the City raises serious concerns about its ability to even grant the previous three percent (3%) single year wage increase and re-opener provision as that provided to the IAFF, much less agree to a wage increase in the amount that the Union is requesting. The City states that the sources of revenue for funding

wages and benefits for these employees has decreased dramatically to the point where it is likely that unless concessions are given, a reduction in force will become inevitable.

The Union acknowledges the City's concerns but argues that its members, by virtue of their relatively meager compensation relative to other City safety force personnel, deserve a 4% increase because they perform services that should be far more valued than the current level of compensation provided by the City of Youngstown. The Union states that it is willing to accept a re-opener for the final 2 years of the Agreement, but it cannot agree to a 2 year wage freeze and re-opener when other employees have received increases. It recognizes that there may come a time in the near future where reductions may be undertaken, however, until that time is at hand, it submits that the City's position is premature. It has always been willing to offer concessions to avoid reductions, but until that decision is a foregone conclusion, it cannot accept a wage freeze when other employees have received increases.

In contrast, the City argues that the members of this bargaining unit are compensated very handsomely and paid at a rate well in excess of the rates in the local labor market for like occupations, eclipsing the 90th wage percentile in many instances. The City further states that the three percent (3%) wage package reached for the IAFF unit should not be controlling in that circumstances have changed substantially since the resolution of that agreement and the IAFF offered a package that created substantial savings that was, in turn, used to fund that increase.

Discussion: Both the City and the Union raise valid points about what the wholesale acceptance of one party's offer over the other would produce from a reasonableness and

equity standpoint. Fortunately, this is not a conciliation proceeding, where one is constrained in his ability to accept and award only the proposal put forth by one side or the other. In analyzing the parties' respective positions, this neutral takes note of several key factors. First, as the last unit in the bargaining cycle, there is a strong pattern of internal comparability already established. Second, though some of the general wage increases were slightly below three percent, many of those had a one-time monetary component to them that produced a GWI close to the equivalent of 3% for the contract cycle year that the parties are discussing. Third, the Union has agreed to higher insurance contributions, which will substantially reduce any monies provided to them. Fourth, there is a great deal of uncertainty surrounding the future need for reductions in the City under current wage rates and the possibility of making matters worse if any type of increase is awarded. The Union has acknowledged this, and though it hopes that reductions can be avoided, it understands that they may have to occur to balance shortfalls.

In light of these factors, and considering that the Employer has already been awarded a streamlined, clear procedure for a reduction in force, the recommendation is that bargaining unit members receive a 3% wage increase for the first year of the Agreement. This increase is supported by the established pattern of internal comparability, and would be partially offset by the increase in insurance contributions that will be made by the employees. Considering the economic uncertainties facing the City, it would also be reasonable to provide that there be a wage reopener for the second and third years of the Contract.

RECOMMENDATION

ARTICLE 25 23 WAGES AND EQUALIZATION

Section 1. ~~Effective July 1, 2005, the wage rates for all bargaining unit classifications will be raised by two percent (2%). Effective July 1, 2006, the wage rates for all bargaining unit classifications will be raised by two and one half percent (2 1/2%) and one half percent (.5%) PERS pick up. Effective July 1, 2008, the wage rates for all bargaining unit classifications will be raised by three and one half percent (3 1/2%) and one half percent (.5%) PERS pick up. For the first year of the Agreement, bargaining unit members will receive a three percent (3.0%) general wage increase effective July 1, 2008.~~

Section 2. Wage Re-Opener. *The parties agree that the union may file to re-open negotiations on the issue of wages only, within sixty (60) days after January 1, 2010. If initiated, the parties agree that this re-opener will be conducted under the procedures outlined in R.C. 4117 and cover the second and third years of the Agreement.*

Section 3. Wage Appendix. ~~A wage scale covering existing bargaining unit classifications shall be created and attached as Appendix E to the contract.~~ *The wage scale covering existing bargaining unit classifications is attached as Appendix E to this contract.*

3. INSURANCE BENEFITS, ARTICLE 24

The only outstanding issue here is when the increases in employee insurance contributions are to become effective. The City proposes to make increases retroactive back to July 1, 2008. The Union's proposal is for the increases to become effective upon execution of the new Agreement.

The City has proposed that bargaining unit members be required to make increases in insurance contributions retroactively back to the beginning of the contract. It states that it is preferable that all portions of the contract should be given full effect during its term, and that the Union is merely trying to avoid contributions that other personnel have been making for a long time.

The Union rejects the City's position and points out that it has already accepted the City's demand to increase the employee contribution substantially. It views that the City's call for completely retroactive insurance payments as being overly aggressive in this area, particularly when its members are some of the lowest paid in the City and have accepted an escalating cap on insurance payments that essentially raises their exposure to insurance costs by more than 200%. It believes that its members should only be subject to the new contribution scheme effective upon execution of the new agreement.

Discussion: As was the case with Wages, both sides have some legitimacy to their positions, and like wages, this fact finder is of the mind that a compromise recommendation would be more appropriate. In doing so, it is important to remember several factors. First, all other City employees are subject to this new insurance contribution provision. Second, the Union has already agreed to accept the new

contribution levels. Third, the Union, even though it is the final unit in the bargaining cycle, will not be receiving the same 3 year wage package as other employees. This means that the Union will be subject to an increase in insurance contribution rates without any guarantee of corresponding wage increases. In fact, in light of the current economic situation, members may shortly find themselves subject to a reduction in force if concessions are not agreed upon. And finally, the parties have engaged in a great deal of restructuring and language clean up which will inevitably delay the time period for actual "execution" of the Agreement.

In light of these factors, it is this fact finder's recommendation that it would be reasonable to provide that the effective date for the insurance contribution increases be May 1, 2009. This will balance the concerns raised by the parties by setting forth a specific date not tied however to the final execution of the new Agreement.

RECOMMENDATION

ARTICLE 13 24 **INSURANCE BENEFITS**

Section 1. Medical and Hospitalization Insurance. ~~The City of Youngstown shall continue to provide a program of insurance benefits as follows:~~

~~The City will provide the amount of fifty five dollars and seventy five cents (\$55.75) per month per bargaining unit employee to the Ohio AFSCME Care Plan for expanded health coverage in the areas of life insurance coverage, drug coverage, hearing aid coverage, vision care coverage and Dental Level II. It is specifically noted that the provision of these benefits is through the Ohio AFSCME Care Plan and the City's obligation is limited to the payment of fifty five dollars and seventy five cents (\$55.75) per month per bargaining unit employee to the Ohio AFSCME Care Plan.~~

~~**Section 2. Hospitalization Conditions.**~~ The City will continue to provide all full-time employees hospitalization coverage with the following conditions: ~~A. Health plan coverage~~ and levels of benefits shall be comparable to that provided in the summary of coverages and benefits attached hereto as Appendix F. Health Plan coverage and benefit levels for ~~calendar year 2005~~, as set forth in Appendix F **or comparable coverage**, shall be effective upon ratification of this agreement.

~~**Section 2. Maintenance Prescriptions.**~~ ~~B.~~ The Union agrees that those employees who are on daily maintenance prescriptions will be required to have their physicians utilize the mail order prescription services of the City's health insurance provider in order that the City will continue to save money on prescription services.

~~**Section 3. Insurance Waiver.**~~ ~~C.~~ Full-time employees eligible for hospitalization coverage who choose not to be covered shall receive ~~the following sums~~ **one hundred forty-five dollars (\$145.00)** per month and be subject to other conditions as are management employees: ~~Increase each year, effective July 1st of each year: 2005 \$145.00 2006 \$145.00 2007 \$145.00~~ Each employee who elects this payment shall demonstrate that she/he receives like or better coverage elsewhere. A bargaining unit employee whose spouse works for the City shall not be eligible for this incentive. Employees and the City shall abide by all applicable COBRA regulations.

~~**Section 4. Carrier/Coverage Changes.**~~ ~~D.~~ The City shall be responsible for entering into the hospitalization contracts with the various carriers of such insurance. The Union will be informed within thirty (30) days of any carrier change. The City will also provide each bargaining unit member with all such changes of coverage policy provisions.

~~**Section 5. Employee Contributions.**~~ ~~E.~~ ~~Health plan premium costs shall be paid by the City for calendar year 2005. Beginning July 1, 2006, participating employees shall contribute three percent (3%) of the total premium payments (costs) for medical, hospitalization, prescription, vision and dental; however, employee contributions shall not exceed ten dollars (\$10.00) per month for single coverage and twenty dollars (\$20.00) per month for family coverage.~~

~~Beginning July 1, 2007, participating employees shall contribute seven percent (7%) of the total premium payments (costs) for medical, hospitalization, prescription, vision, and dental; however, employee contributions shall not exceed twenty-five dollars (\$25.00) per month for single coverage and fifty dollars (\$50.00) per month for family coverage. **Effective May 1, 2009, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage, not to exceed thirty-five dollars (\$35.00) per month for single coverage and seventy-five dollars (\$75.00) per month for family coverage.**~~

Effective July 1, 2009, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage, not to exceed sixty-five dollars (\$65.00) per month for single coverage and one hundred fifteen dollars (\$115.00) per month for family coverage.

Effective July 1, 2010, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage, not to exceed eighty dollars (\$80.00) per month for single coverage and one hundred fifty dollars (\$150.00) per month for family coverage.

Section 6. AFSCME Health and Welfare Fund. The City will provide the amount of fifty-five dollars and seventy-five cents (\$55.75) per month per bargaining unit employee to the Ohio AFSCME Care Plan for expanded health coverage in the areas of life insurance coverage, drug coverage, hearing aid coverage, vision care coverage and Dental Level II. It is specifically noted that the provision of these benefits is through the Ohio AFSCME Care Plan and the City's obligation is limited to the payment of fifty-five dollars and seventy-five cents (\$55.75) per month per bargaining unit employee to the Ohio AFSCME Care Plan.

4. RETIREMENT AND SEVERANCE, ARTICLE 24

The City proposes that employees hired after June 30, 2008 not be eligible to receive cash out payments if they separate with less than ten years of service. The Union opposes the change put forth by the City for severance payments.

The City has proposed that bargaining unit members who separate from City service without retiring and with 10 years of service no longer be allowed to receive cash payments for vacation leave and sick leave. It states that it has a “use it or lose it” vacation policy and that it negates the effectiveness of the policy to allow employees to receive payment for unused vacation time when they are leaving City employment. Also, the Employer states that severance payments should only occur for an employee that is retiring with 10 years of service. Structuring these payments otherwise defeats the purpose of rewarding long time city service. Lastly, the City points out that the parties have agreed to make the above changes prospectively so as to not negatively impact current members.

The Union rejects the City’s position and states that it believes the City’s proposal to be short sighted and would produce more problems than it remedies. It believes that it is simply inequitable to allow the City to eliminate severance payments in this fashion and opposes the change.

Discussion: This fact-finder finds that it would be appropriate to modify the Severance Pay Provision as proposed by the City for those hired after June 30, 2008. The City’s proposal has merit for the reasons previously discussed. The recommended provision reasonably addresses legitimate concerns in a manner that makes sense while not

negatively impacting current bargaining unit members. It should be noted that the parties entered into a side letter agreement which in effect states that the change will not affect those employees who were members of the bargaining unit as of June 30, 2008. A copy of this side letter is attached and incorporated into the recommendation.

RECOMMENDATION

ISSUE 4, ARTICLE 16, SECTION 3 35

LEAVES AND OTHER BENEFITS RETIREMENT AND SEVERANCE

Section 1. When an employee retires ~~or leaves City employment for any other reason,~~ *under the applicable pension system with ten (10) or more years of service with the City,* the City shall pay him/her the full value of his/her accumulated vacation time and thirty-five percent (35%) of the value of his/her accumulated sick leave. This shall be paid on the basis of the employee's current basic hourly wage or on the basis of the hourly wage at the time the benefit was accrued, whichever is greater. ***Severance payments for sick leave and vacation leave, described above, shall not be made to any member not meeting the retirement and years of service criteria set forth above.***

Section 2. If an employee dies prior to retirement, the City shall pay his/her designated beneficiary, or the legally appropriate beneficiary, the full value of his/her accumulated vacation time, and thirty-five percent (35%) of the value of his/her accumulated sick leave. This shall be paid on the basis of the hourly wage at the time the benefit was accrued, whichever is greater. The proper designation of the beneficiary shall be made on forms provided by the City's Risk Management office.

SIDE LETTER #1

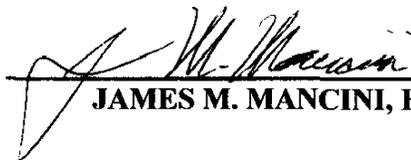
SICK LEAVE SEVERANCE PAY

Notwithstanding the sick leave severance criteria set forth in Article 35, Section 1, the parties agree that those employees that are members of the bargaining unit as of June 30, 2008, shall continue to be allowed to receive payment for thirty-five percent (35%) of the value of their accumulated sick leave and all accumulated unused vacation upon separation from City employment.

CONCLUSION

In conclusion, this Fact Finder hereby submits his Recommendations on the outstanding issues presented. Incorporated into these Recommendations, via reference, are all previously executed tentative agreements that were identified in the pre-hearing submission of the Employer.

MAY 14, 2009



JAMES M. MANCINI, FACT-FINDER

JAMES M. MANCINI

ATTORNEY AT LAW - ARBITRATOR

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STATE EMPLOYMENT
RELATIONS BOARD

2009 MAY 18 A 10:51

May 14, 2009

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Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, Ohio 43215-4213

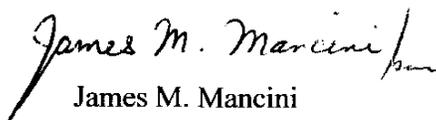
RE: Case No. 2008-MED-10-1273
City of Youngstown
-and-
AFSCME, Ohio Council 8
Local 2312

Dear Mr. Turner:

Enclosed herewith is a copy of my fact-finder's Findings & Recommendations
in the above referred to matter.

Thank you.

Very truly yours,


James M. Mancini

JMM:em
Enclosure