

THE STATE EMPLOYER RELATIONS BORD
JUNE 2, 2010

AFSCME, OHIO COUNCIL 18,)	
LOCAL 996)	CASE NO. 08-MED-12-1407
Employer Organization (Union))	
)	
and)	FACT FINDER: RICHARD F. NOVAK
)	
CITY OF MASSILLON, OHIO)	
)	
EMPLOYER. (City))	FACT FINDING REPORT

APPEARANCES

FOR THE UNION:

Sheyllby L. Woodoll, Staff Representative
Kevin Paehis, Union President
Dough Voshel, Vice President

Tim Ortiz, Steward

Larry Kerstetter, Steward
John McClay, Executive Board

FOR THE EMPLOYER:

LESLIE IAMS KUNTS, ATTORNEY
MIKE LOUDIANA, SAFETY SERVICE DIRECTOR
KENN KAMMSKI, DRECTORY OF PARKS AND RECREATION
MIKE STEVENS, OPERATIONS SUPERINTENFRNT

INTRODUCTION

On December 2, 2009 in compliance with the Ohio Revision Code §4117.14(C)(3), SERB appointed this fact finder in this case. As per mutual agreements of the parties pursuant to OACR 4117-9-05 (G), the fact-finding was extended until April 30, 2010. The parties agreed that the fact-finding would be held on April 20 and 21 at the Massillon City Hall.

As required by state statue, this fact finder considered all of the below factors:

- (a) Past collectively bargained agreements, if any, between the parties;

- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining units involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved,
- (c) The intersects and welfare of the public, the ability of the public employer to finance and administer this issues proposed, and the effort of the adjustments of the normal standard of public service.
- (d) The lawful authority of the public employer,
- (e) The stipulations of the parties,
- (f) Such other factors not confined to those listed in this section which are normally or traditionally taken into consideration in the determination the issues submitted to fact finding resolutions through voluntary collective bargaining, fact finding mediation or other impasse resolution procedures in the public service or private employment

After the fact finding hearing the parties requested mediation. The fact finders spent a substantial amount of time speaking to both parties separately. Mediation was successful to the point that some issues were settled between the parties and requested that such resolutions be embodied in the fact finders findings.

The fact finder was left with the following eleven (11) issues upon which to make this recommendations or findings and resolution:

Issue #. 1, Article 44-Wages and other compensations

Issue #. 2 and 3 Article 32- Longevity pay and Article 33 hospitalization/ life insurance

Issue # 4- Article 41- Safety boot allowance

Issue # 5- Article 1- Staffing table and related side letter

Issue # 6 -Article 18- Recalls

Issue # 7- Article 1- Recognition- Clerk/ Dispatcher position

Issue # 8- Article 43- Contract out snow plowing

Issue # 9- Side letter- Cross bidding

Issue # 10- Article 44- Payroll check direct deposit

Issue # 11- Article 51- Duration and term

TENTATIVE AGREEMENTS BY THE PARTIES

The six (6) tentative agreements reached between the parties in collective bargaining are also hereby included in the fact finding report by reference. These signed agreements were submitted with the parties pre-hearing information to the fact finder and hereby incorporated in their entirety by reference and subject listed as follows:

1. Article 13. Seniority
2. Article 20. Leaves of Absence
3. Article 37 (34) Extra Contract Agreements, Section 1.
4. Article 48 (43) P.E.O.P.L.E. , add as an Article
5. Labor/Management Meetings
6. Article 31, AFSCME Union Health and Welfare Fund

CONTINUATION OF THE CURRENT COLLECTIVE AGREEMENT

The successor contract shall carry forward all of the current contract provisions unless they are modified or eliminated by the “tentative agreements” of the parties OR the findings of this report; and incorporate into the new agreement, Mutatis Mutandis, all articles and sections

and articles and side letters of the April 1, 2006 agreement between The City of Massillon Ohio and AFSCME Ohio council 8, Local 996 AFL-CIO.

FACTUAL FINDINGS

Although the city of Massillon has grown in square miles to 18.7 square miles from 12.0 square miles in 1990, the population has remained essentially unchanged 31,000 to 32,000 residents for the past ten years. Approximately 66% of the general fund’s revenue is derived from city income tax which has grown by less than 2.0% per year since 2001. However other sources of revenue (approx 34% of the general fund) such as personal property tax, local government funding and interest earned from city investments have actually declined since 2001 and in particular since 2008 which was the city’s highest year for total revenues. For 2010 revenues are projected to be as much as \$1.5 million less than 2008 levels and approximately \$700,000 less than 2001 levels. Ending cash balances have also materially declined since 2001 and without the benefits of special non-reoccurring insurance recovered in 2008 and 2009 ending cash balances could have been negative. The following summary table illustrates the numbers listed above.

Comparison of Total General Fund Revenues Total Expenditures

<u>Item</u>	<u>Actual</u> 2001	<u>Actual</u> 2008	<u>Actual</u> 2009	<u>Actual</u> 2010
Revenues	\$ 16,366,000	\$ 17,189,500	\$ (1)16,645,900	\$ 15,692,800
Expenditures	\$ 16,373,006	\$ 17,383,700	\$ 16,426,000	\$ 15,715,900
Revenue over/exp.	\$ (6,700)	\$ (194,300)	\$ 373,557	-

Ending cash balance	\$ 749,700	\$ 153,600	\$ 205,600	\$ 182,500
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(1) Includes approximate + 400,000 of one time non-reoccurring events

The city has enacted numerous expenditure Reduction efforts including head count reductions through out all departments. Most notably, and very relevant to this fact finder, The city has also negotiated in 2009 a three year successor labor agreement with its largest bargaining Units of Police and Fire department essentially providing a roll-over pay freeze for years 2009 and 2010 with a 4% pay increase in the third year (2011).

It is also significant that the city has had a history of pattern economic bargaining with the Police/Fire and AFSCME bargaining units dating back to 1990 where the wage increases in all collective bargaining for units have tracked near identical percent increases in each year. In addition the ACUE unit which is a non-union group of salaried staff employees have had percent salary adjustment that, for all but one year (2006 at 2%), tracked the same percentage increase as Police/Fire and AFSCME since 1990. In the case of 2006 there was a plausible explanation by the city for the ACUE 2% wage increase due to differences in the pension plan contributions by the employer.

It is also note worthy that this union’s labor economist in his analysis in January 2009 based upon estimated 2009 budget date provided by the city stated:

“The city has a strong track record of sound fiscal management. Budgets have been accurate; reserves have been kept at fairly consistent levels and surpluses have been used to fund other government spending”

However looking forward, it is quite possible that the city could experience troubles. The national down turn is real.”....

While the union economist was presented estimates for 2009 revenues and expenditures, the actual data provided at the fact finding hearing in May of 2010 is undeniably clear to draw the following conclusion: “The city is in fiscally challenged position in which 2009 estimates have been validated by actual revenues and expenses which leave little room for increased spending; and 2010 projections depict a more financial challenging year than 2009 actuals.”

The fact finder believes from all the data provided during the hearings the city of Massillon is “Experiencing financial troubles” and the city must now accordingly hold expenditures in line with declining revenues.

ISSUE # 1

Article 44-wages and other compensation.

During the fact finding evidence was presented by the city regarding its financial condition and budget shortfall for 2010. In addition the city described the historical pattern bargaining economic provisions with other unions representing Police, Fire and Waste Water Treatment bargaining unit employees. The city also disclosed the historical wage adjustments provided non-bargaining for employees who are referred to as the “ACUE unit”. The fact finder finds two important findings which are: (1) The city’s financial condition for 2009 and 2010 supports a wage freeze of 0% for 2009 and 2010 and (2) there has been consistent pattern bargaining economics with bargains for units of Police, Fire and Waste Water Treatment

employees to support continuation of such practice and thus have 0% wage increases in 2009 and 2010 for units on local 996.

During the mediation process of the fact finding hearing the parties agreed to two issues as they relate to Article 44- wages. (1) That parties agreed to basic wages increases of 0% in 2009, 0% in 2010 and 4% increases effective April 1, 2011- March 31, 2012 for employees represented by local 996.

(2) The city also assured the union that for 2010 parity of 0% increase would be applied to the wage schedules/rates applicable to all ACUE employees whose compensation is controlled by the mayor's office.

The fact finder finds that these resolutions are consistent with the persuasive facts surrounding the collative bargaining; and hereby incorporate the city's and union's agreement to the aforementioned two items as resolution of the parties issues as it relates to the wage adjustments during the term of the successor collative agreement.

ISSUES 2 AND 3

In issue 2, longevity pay, the Union seeks an increase in Article 32, section 1: and in Issue 3 "Existing Benefit" Under Article 33 hospitalization / life insurance, the City proposes to eliminate the extra \$ 10,000 of life insurance benefits which local 996 employees have under the current collective agreement.

The fact finder finds that neither party presented persuasive facts or rational to support the changes proposed to longevity pay and/ or life insurance levels. In addition the evidence of the relevant pattern settlements of the other bargaining units within the city do not support

improvements in other elements or pay (such as longevity pay) or “concessions” (reductions in) in existing levels of benefits (such as life insurance). Furthermore, based upon the City’s financial status and budget reconciliation and estimates there is inadequate financial distress to support true concession bargaining demands at this time; ergo it is un-reasonable for the fact finder to reduce the extra \$ 10,000 or life insurance in the existing agreement. Accordingly the fact finder findings are Article 32 longevity pay and Article 33 hospitalization / life insurance in the current agreement remain “As is” and continue unchanged in this successor collective agreement.

ISSUE # 4- SAFTY SHOE ALLOWANCE-

The union seeks to increase the current boot allowance of \$80.00 per employee since this allowance has remained unchanged since it was first negotiated many years ago in the contract. The City points to other recently negotiated agreements with the Police and Fire units which have had no increases in similar clothing/uniform/safety equipment allowances. The City also emphasis as current budget limitations for 2010 and the need to hold the line on expense increases and or reduce city spending.

The fact finder can appreciate the unions’ rationale for increasing the boot allowance if these were normal economic times and normal collective bargaining conditions. However when the supporting budgetary evidence presented by the city for 2009, and 2010 supports a 0% wage increase for each year, it is counter intuitive to believe that it is reasonable to increase city expenses for other employments costs such as a boot allowance increase when city revenues are insufficient to support wages increases and when employees have been laid off. Accordingly the

fact finder finds that the current boot allowance of \$80.00 should continue “as is” and remain unchanged during the duration of the succession agreement

ISSUE 5-STAFFING TABLE AND RELATED SIDE LETTER

The city proposes that Article 1 Section 6 Staffing and the related side letter should be eliminated.

Based upon the historical inconsistency of actual staffing to the staffing numbers in Article 1, Section 6, the changed conditions and economics since the original agreement on staffing levels, and recognition of the outdated staffing levels by the side letter itself, the fact finder finds that Section 6 Staffing should be modified by:(1) deleting all staffing numbers in section 6, (a)(b)(c)(d)(e), however the listed positions shall remain unchanged, and (2) delete the above referenced related staffing side letter from the successor collective agreement .

The fact finder also finds that by the modifications of Article 1, Section 6 as described above it is reasonable to find in favor of the union’s proposal to modify the current Recall language of Article 18. The specifics of modification in the Recall Article 18 will be described in detail in Article 18, Recalls Issue # 6.

In addition, the fact finder finds that to avoid any misunderstandings as to the impact of eliminating the staffing numbers the following language will be added to Article 1, Section 2, as a last sentence: “The city will not use attrition which is caused by quite, retirement, death, or discharge, to dilute the levels of higher paid job classifications in a department by replacing such attrited position with a lower paid classification position.”

ARTICLE 18 ISSUE # 6 RECALLS

The union proposes modification of the existing article 18 Recall language to reflect the current practice of returning laid off employees to the classifications they formerly held prior to being bumped or displaced. The city proposes that the existing Article 18 remain unchanged and the most recent and future recalls for bumping or displacements follow the current contract language.

Considering the historical practice and prior agreement of the parties to return displaced employees to their former incumbent classification AND THE ELIMINATION (emphasis added) to the staffing numbers and related side letter in Article 1 which the fact finder finds in the aforementioned discussion of Article 1, Issue # 5, the fact finder finds that the union's request to modify Article 18 Recall is more reasonable and accordingly the fact finder proposes this following new language to replace the existing Article 18, Section 1, of the collective agreement. The new language and its application was reviewed with the respective attorneys and deemed an acceptable resolution to the recall issue.

Article 18
RECALLS
(Replaces existing Section 1.)

Section 1. Principles

a. The delivery of efficient, effective and safe services to the city shall be the first priority taken into account when recalling employees.

b. Every effort will be made to recall bumped and laid off employees to the classification they held prior to the displacement of the work force; however principle (a) above may effect where an employee is first recalled from layoff.

Section 2. Guidelines

A. Internal Recall—Employees working out of their regular position

- a. Internal recall rights shall last for eighteen (18) months from the date of displacement.
- b. Employees who have been bumped or reduced from their regular position/classification (defined as the position to which a person bid and was holding immediately prior to the reduction in force) will maintain recall rights to that position.
- c. Vacancies in a department shall first be offered to employees on the recall list who are working out of their regular classification. Such vacancies will be filled in accordance with classification seniority. (For example, an employee within the street department that has been reduced from a truck driver classification to a laborer classification as a result of being bumped or displaced from their original position, and who is the most senior employee within that classification, shall first be offered the opportunity to return to their original classification when there is a vacancy.)
- d. When the City contacts an employee with internal recall rights and personally offers recall to their regular position, the employee must immediately accept or decline the recall. If an employee declines the position, the employee shall be removed from the recall list and the assigned position which the employee is in, will be deemed his/her regular position until the employee bids and is awarded a new position. Employees who are on vacation during a recall period must complete a form (available from the city) , prior to going on vacation, which indicates their acceptance to a recalled position, if offered while on vacation. Otherwise such employee will be passed over on the recall list until they return from vacation.
- e. Employees on the recall list who are on any leave of absence will be skipped over during a recall and will have recall rights when they return to active employment status.
- f. Employees who accept a recall to a position will return to the same longevity increment and pay grade he/she held prior to being displaced from the position.
- g. To maintain rights on the recall list an employee must maintain their license or certification for their regular position. Otherwise the employee shall be removed from the recall list.
- h. The City will maintain a list of employees who have recall rights to a position and periodically review such list with the local union officials.

Section 3. Recall From Layoff Status --- Employees Not Working

- a. Employees on layoff will be retained on a recall (reemployment) list for up to eighteen (18) calendar months following layoff.

b. The most senior employee(s) on layoff status, based upon City seniority will be offered the position(s) that are not filled by employees currently working who have internal recall rights under Section 4.

c. Employees returned from layoff will return to the same longevity increment he/she held prior to being laid off and to the pay grade associated with the job the employee is assigned.

d. Notice of recall shall be sent to the employee by certified or registered mail with a copy to the Union. The Employer shall be deemed to have fulfilled its obligations by mailing the recall notice by registered mail, return receipt requested, to the last mailing address provided by the employee. A laid off employee shall be given ten (10) calendar days after receipt of notice of recall or fourteen (14) calendar days after postmark of notice of recall, whichever date occurs first, in which to report for duty, unless a different date for returning to work is otherwise specified in the notice or agreed to by the employer and employee.

e. Employees returned to a position which is not their regular position will be placed on the Internal Recall List for placement to their regular position in accordance with internal recall rights under Section 4.

Section 4. Job Postings

a. The job posting procedure in Article 14. shall not apply to vacancies which can be filled in accordance with the Internal Recall provisions of Section 2. of this Article 18. or to vacancies which are to be filled in accordance with the provisions of Section 3. of this Article 18. which is applicable to employees on layoff status who have reemployment rights.

In addition, the fact finder finds it reasonable to restore the Status Quo prior to the 2009/2010 Layoff. As a result of the recent layoff and recall of employees with AFCME Local 996, employees in the Parks, Streets, and Sanitation departments were displaced/bumped from their original bid positions. As a result of the Recall language in effect, employees were not recalled, as had been the practice in prior layoffs, but rather in accordance with the Recall provisions in the contract, which resulted in employees remaining displaced from their original bid position.

In order to resolve the matter regarding the displacement of said employees, those employees displaced/bumped from their positions shall be returned to their original bid position at the rate of pay for that position. This is consistent with the objectives of the New Recall language proposed by the fact finder which shall apply to all future recalls from layoff.

These transfers of employees to their original bid position shall occur no later than seven (7) working days after the parties' acceptance of the fact finders award. This resolution provided herein shall resolve all pending grievances related to the 2009/2010 layoffs and recalls.

**ISSUE # 7- ARTICLE I RECIGNITION- REMOVE THE POSITION OF CLARK/
DISPATCHER FROM THE BARGANING UNIT**

The city proposes that this position should be removed from the bargaining unit due to the fact that the current workload has declined from 40 hours per week to approximately 15 hours per week and the city cannot afford to provide 40 hours of bargaining unit work to this position.

It is important to note that a recent arbitrator's award stated, "The city is directed to take steps to see that the clerk/dispatcher position does not remain vacant." Accordingly the position was posted and applicants have applied for the position.

It is not appropriate for the fact finder to nullify and arbitrators award particularly while compliance with this award is a "work in progress" or to nullify the rights or application exercised by an existing employers/ grievant.

The fact finder finds that the city should compete the process of filling the Vacancy through the normal evaluation, testing and selection process it uses to fills such positions. The testing methods should be comparable to the methods used by the city of Massillon for like as similar clerical jobs within the city.

The fact finder finds that the position of clerk dispatcher is still a bargaining unit position. The fact that the work has been reduced from 40 hours to approximately 15 hours per week does not alter the fact that the remaining work is still bargaining unit work. Accordingly the city can

either make the position “part-time” or supplement it with “other work”. Such other work may or may not be bargaining unit work depending up the nature and origin of the “assigned other work” and accordingly the position maybe a part time bargaining unit and non bargaining unit position.

The fact finder also finds it is the city’s decision to determine the “qualified applicant ”To perform the full scope of the full or part time position as created, and any dispute over qualifications is an appropriate subject for the grievance /arbitration process.

ISSUE # 8- CONTRACTIN OUT EXCESS SNOW REMOVAL

The city proposes modification to Article 43, contracting out, to permit the city to contract out snow removal. This fact finder finds that snow removal should first be preformed by the approved bargaining unit employees in the street department. If the city is short staffed in the street department, snow plowing should next be offered on an overtime basis to other bargaining unit employees or local 996 who are qualified and who have volunteered to perform such work. The city will establish a polling process each year to identify employees for such list. If such work cannot be filed from the volunteer list, the work should next be offered to qualified local 996 bargaining unit employees who are on layoff status and have recall rights.

Thereafter, excess snow plowing assignments should be made in accordance with Section 3, Article 1 or Article 3 of the collective agreement.

ISSUE 9-CROSS BIDDING-THE UNION SEEKS

To proved a new article in the local 996 collective agreements of the city service units and Waste Water units which would permit limited transfers or cross bidding of local 996

bargaining unit employee between these respective units. The union cites the recent layoffs in the services departments and the relative stability of the Waste Water unit as factors which cause or may cause service unit employees to transfer into jobs in the Waste Water units. Union representatives were present during the fact finding hearing and indicated that the Waste Water unit could accommodate the current informal practice to offer vacancies to the service units employees to the Waste Water bargaining unit if there is no qualified bidder applying for such job from within the Waste Water unit.

The city is opposed to such a cross transfer arrangement due to EPA licensing/certification requirements of the WW unit, contractual rights of employees in separate bargaining units and the modification of collective bargaining agreement (CBA) which is not a party to these negotiations.

The fact finder finds that the city's arguments against cross bidding as proposed are all very reasonable and problematic to effective contract execution and compliance with stringent EPA regulations.

Notwithstanding the city's concerns, the union's concern regarding the employment stability of the service unit employees is compelling. Today's new realities of: redesign of work systems, changes in historical staffing levels, multi-skill position requirements and greater management flexibility to drive efficiency must be balanced with the work forces' entitlement to optimal employment stability (a reasonable quid pro quo).

The fact finder has tried to apply this balance of addressing both parties core issues in his findings on issues 1 and 5 ; and the union's also deserves a creative solution so that these findings are balanced and responsive to both parties core issues.

Accordingly, the fact finder finds that it is reasonable for local 996 service unit employees have some limited rights to vacancies in the Waste Water department. These rights must be balanced with and responsive to certain key factors which are: (1) the primary rights of existing Waste Water Employees to vacancies within the department and (2) the qualification requirements, certification and/or licenses required of Waste Water employee by the Environmental Protection Agencies or the requirements of the city to insure proper and adequate skill levels to perform the full responsibilities of the jobs within the Waste Water Unit.

A reasonable solution to the unions cross bidding proposal, considering the aforementioned, is a form of "Applicant Priority" for qualified service units employees over similarly qualified applicants on the city's civil service list applicable to the Waste Water department. Such rights can be confined to this collective agreement.

SIDE LETTER

RE: EMPLOYMENT OPPORTUNITYS IN THE WAST WATER UNIT

"Service unit employees of local 996 may apply for inclusion on the civil service applicant list applicable to the Waste Water Unit local 996 positions. Such employees must satisfactorily complete ALL required tests and hold any required certification or license required by the normal applicant process. When a vacancy occurs which is to be filled from the civil

service list, such service unit employee will be offered such position before it is offered to a non-city employee/applicant on the civil service applicant list.

The successful service unit employee shall carry his/her city seniority to the Waste Water unit for purpose of longevity, retirement, sick/ disability and vacation benefits; however for purpose of layoffs, recall, or bidding within in the Waste Water department, seniority will accrue from the date of transfer to the Waste Water department.”

ISSUE # 10- AUTOMATIC PAYROLL CHECK DIRECT DEPOSIT-

The city is proposing deletion of Section 7. Pay checks of Article 44 of the current agreement and thereby implementing an electronic “direct deposit” system of pay checks with local area banks effective as soon as possible. The union cites an arbitration award and has secured an injunction to prevent the changes to payroll check direct deposit.

The fact finder finds the prevalence of automatic payroll check direct deposit systems to be the norm with most major employers. This fact finder finds that the city’s proposal to eliminate Section 7 of Article 44 is reasonable and should have the right to implement such direct deposit system on or after August 1, 2010 subject to full filling the following conditions:

- (1) The city will explore the “special banking privileges or Perks” offered by at least two regional banks in the area and make available such banking benefits (if available) to local 996 employees, and
- (2) The city will explore, with the Federal Mediation and Conciliation Services (FMCS) or the State Employee Relations Board (SERB) , services aimed at improving labor/management relations (some times

referred to as(RBO) or Relationships By Objectives. The city will review these services with local union 996 officials and, if agreeable by the local union, the city will participate with local 996 officials in one of such facilitation services by the end of 2010.

ISSUE #11 ARTICLE 51 DURATION AND TERM

Effective Dates

The party's submissions at the fact finding hearing on this subject are identical.

Essentially they both propose that Section 1 of the Article 51 be revised as follows

Section 1. The agreement should be effective April 1, 2009 and shall continue until March 31, 2012, unless ether party gives written notes to the other part at least ninety (90) days prior to March 31, 2012, to terminate, modify, or negotiate a successor collective bargaining agreement. The fact finder includes this duration and term in his findings.

Respectively Submitted,

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