

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In Regard To The Matter Of The Fact-Finding Between:

THE STARK COUNTY BOARD OF) 09-MED-09-0847
COMMISSIONERS) (Building Department)
)
-AND-)
)
AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL EMPLOYEES)
AFL-CIO, OHIO COUNCIL 8)
LOCAL 959)

STATE EMPLOYMENT
RELATIONS BOARD
2010 JUL 28 P 4: 41

ATTENDANCE:

For The County:

Leslie Kuntz, Esq., Attorney
Marsha Cimadevilla Personnel Manager
Edward Stetz Retired Chief Building Official

For The Union:

Shelby L. Woodall Staff Representative
Ken Mice Electrical Inspector
Sonia Bergenorg Office Clerk

BEFORE ALAN MILES RUBEN, FACT-FINDER

Cleveland-Marshall College of Law
Cleveland State University
1801 Euclid Avenue
Cleveland, OH 44115
Tele: (216) 687-2310
Fax: (216) 687-6881
E-Mail: alan.ruben@law.csuohio.edu

BACKGROUND:

Stark County, Ohio, occupies a territory of 576 square miles and includes within its borders some fifty-two political sub-divisions. It has an estimated residential population of 380,000.

The County is governed by the Stark County Board of Commissioners which excises statutory authority and responsibility, inter alia, for the enforcement of residential and commercial building codes and the issuance of building permits for the erection or remodeling of structures located in the unincorporated areas of the County, and in those villages and cities which have contractually delegated those responsibilities to the County.

In 1967, pursuant to Sections 307.37 and 307.38 of the Ohio Revised Code, the Commissioners created the Stark County Building Department to provide inspection services and discharge its permit issuing responsibilities. The Building Department, headed by an appointed Chief Building Official, is organized into three Divisions - Structural, Electrical and Heating.

The Department presently employs seven full-time and one part-time employee in the following classifications: Plant Examiner (one full-time); Electrical Inspector (one

full-time and one part-time), Building - Heating Inspector (two full-time) and Office Clerk (three full-time). With the exception of the Office Clerk position, each of the classifications requires the incumbent to hold an appropriate license or certification.

Collectively, these seven employees form a Bargaining Unit exclusively represented by Local 959, the American Federation of State, County and Municipal Employees, Ohio Council 8, (AFSCME).

The Board of Commissioners and AFSCME were parties to a Collective Bargaining Agreement entered into as of January 1, 2007 for an initial term which expired on December 31, 2009.

Pursuant to Contractual requirements, timely notices were given by the parties of their intent to modify or amend the Agreement, and negotiations proceeded looking towards the execution of a successor Agreement.

The parties met on approximately four occasions during the months of October, November and December, 2009 and at a mediation session held in April, 2010. As a result of the negotiations and mediation, the parties reached tentative agreements on changes to the text of the following provisions:

Article 3 - Union Representation:

Article 11 - Grievance Procedure;
Article 12 - Probationary Periods;
Article 13 - Seniority;
Article 15 - Lay-Off and Recall;
Article 20 - Holidays;
Article 24 - Wage Rates;
Article 26 - Hospitalization/Major Medical/Life Insurance;
Article 35 - Duration of Agreement
(New Article) - AFSCME (P.E.O.P.L.E.) Deductions (Formerly
"Appendix A - Letter of Understanding" and "Authorization
for Volunteer Payroll Deduction;
Appendix B - Memorandum of Understanding (Deletion), and
Appendix C - Official Grievance Form

The parties, moreover, tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis, all other Articles, Appendices and Memoranda from the 2007 Agreement with the exception of Article 2.

The Fact-Finder finds appropriate and recommends the adoption of all of these tentative Agreements.

A series of proposals to add new provisions and to amend other Articles and Sections of Articles of the 2007 Contract were withdrawn and are deemed to have been abandoned.

Remaining unresolved were proposals submitted by the County for changes to Article 2 and the addition of a new Article, "Furloughs/Cost Saving Days".

The parties declared impasse, and on May 25, 2010, the undersigned was appointed Fact-Finder by the State Employment Relations Board.

At the direction of the parties, an evidentiary hearing was held on June 30, 2010 at the Stark County Administration Building.

Timely in advance of the hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code Section 4117.14(C)(3)(a).

At the hearing the County introduced the following documents: a copy of "Stark County Quickfacts" containing data compiled by the United States Census Bureau; the Stark County Building Department Budget for 2011, and excerpts relating to "Furloughs and Mandatory Cost Saving Days" from the following current Contracts entered into between: (1) the Stark County Board of Commissioners and the General Truck Drivers and Helpers Union, Local 92, IBT, (covering employees in the County garage); (2) the City of Barberton and the American Federation of State, County and Municipal Employees, Local 265, and Ohio Council 8, AFL-CIO, and (3) the State of Ohio and the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO.

The Union, in its turn, offered the 2009 "Active Employee [Payroll System] Report" from the Stark County Auditor's Office disclosing the annual salaries of the Department's then current employee; the Building Department

Tax Budget for 2010, a special audit of the Stark County Treasurer's Office for the period January 1, 2005 through April 13, 2009, conducted by the Auditor of State which reported the potential theft and unauthorized expenditures of some \$3,000,000.00 of County funds; excerpts from the current Contracts between: (1) The Stark County Sanitary Engineer and AFSCME Ohio Council 8, Local 959 and (2) The Stark County Engineer and AFSCME, Ohio Council 8, Local 2198; an August, 2009 notification of a layoff or reduction in hours of Building Department employees; an information request concerning the financial condition of the Building Department and a demand to bargain as to the terms and conditions of the proposed reduced work week.

In making his analysis of the evidence and his recommendations upon the unresolved issues, the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code 4117-9-05(K) namely:

"(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 unit 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 interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

"(d). the lawful authority of the public employer;

"(e). the stipulation of the parties;

"(f). such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment."

CONTRACT PROVISIONS AT ISSUE:
INTRODUCTION:

Taking one thing with another, a Fact-Finder's lot is not a happy one. He is required to make recommendations with respect to the economic relationship of the parties during the next thirty months or so, at a time of an unprecedented recession whose depth and length not even Nobel Prize Laureates can predict with assurance. Further, the estimates supplied by the parties lack verification by comprehensive, audited 2009 and 2010 financial data which were unavailable at the time of the fact-finding hearing.

Clearly, however, as with most other political subdivisions, the County has been adversely impacted by the recession and, in particular, by the housing market

depression. The Building Department has been especially hard hit.

The parties acknowledged that since its inception the Building Department has been entirely self-financed from revenues generated by the inspection charges and permit fees paid by builders engaged in new construction and remodeling, and that the County General Fund has not provided any subvention to the Department.

The Department's revenues and expenditures are reflected in a separate "Building Inspection Fund", designated as "Fund 157".

The available balance in Fund 157 declined markedly over the past two years from \$492,000.00 as of January 1, 2008 to some \$151,000.00 as of January 1, 2010, because expenditures exceeded receipts.

The carry-over reduction was primarily attributable to a significant fall-off in the Department's revenues rather than a significant increase in the cost of personnel services.

Thus, the annual revenues generated by the Department which had reached a high of \$811,000.00 in 2006 totaled only \$572,000.00 in 2009. The Department's personnel costs remained static during the two year period, amounting to approximately \$616,000.00.

As of September 1, 2009, Fund 157's deteriorating finances led to the temporary lay-off of one Electrical Inspector and the reduction from full-time to part-time hours of one Clerk, one Electrical Inspector and one Plans Examiner position.¹

The 2010 County budget forecasts an increase in revenues to \$615,000.00 and calls for a slight lowering of personnel cost to \$580,000.00.

The total Departmental outgo, as reflected in the 2010 budget, is still expected to exceed revenues, but only by some \$13,000.00, so that Fund 157 is expected to provide the aforementioned carryover of \$151,621.00 as of December 31, 2010.

It is not possible at the present date to determine how realistic the budget projections are.

Nonetheless, the Fact-Finder finds that barring an unanticipated, extraordinary decline in revenues for the balance of 2010, or an unbudgeted, substantial augmentation of expenditures, Fund 157 has sufficient revenues to cover its operating costs for the year and still maintain a significant carry-over cushion for 2011.

I. Article 2 - "Union Recognition"

¹A grievance challenging the reduction of hours of the three employees is pending arbitral review.

A. Current Contract Provision:

The expired Contract provides a limited authorization for performance of Bargaining Unit work by the Chief Building Official:

"Article 2-Union Recognition:

....

"Section 2: The parties agree that the Employer may augment the work force with outside individuals performing bargaining unit work under the following conditions:

....

"C. The Chief Building Official shall be permitted to perform work of the bargaining unit employees so long as the performance of this work does not result in the layoff of bargaining unit employees.

...."

B. The County's Proposal:

The County proposes a "clarification" of the Chief Building Official's right to perform Bargaining Unit work:

"Memorandum of Understanding:

"In clarification of Article 2 Section 2(C), it is agreed by the parties that in the event that a lack of funds or lack of work causes a layoff of bargaining unit members, the Chief Building Official may perform the work of bargaining unit."

C. The Union's Proposal:

The Union proposes to retain current Contract language without "clarification".

D. The Fact-Finder's Analysis, Findings And

Recommendations:

At present, the Chief Building Official is permitted to perform Bargaining Unit work only when his participation would not result in the layoff of Bargaining Unit employees. The County's requested "clarification" would turn things around by allowing him to perform Bargaining Unit work when lack of funds or lack of work is responsible for the layoff. The reformulation would, however, raise the question whether the availability of the Chief Building Official to perform the work may influence the County's decision to layoff personnel.

The Fact-Finder cannot recommend the County's proposal.

There are few developments more apt to create friction in the labor relations environment and proliferate disputes than the routine, non-emergency performance of bargaining unit work by managerial and supervisory employees.

Such intrusions can threaten not only the job security of Bargaining Unit members, but ultimately the security of the Union itself.

Nothing in the evidentiary record supports, much less justifies, an enlargement of the concession already granted by the Union allowing a limited opportunity for the Chief

Building Official to engage in the work assigned to the various classifications of Bargaining Unit employees.

Accordingly the Fact-Finder finds appropriate and recommends that Article 2 of the expired Contract be carried forward without change and incorporated into the successor Agreement, and that the County's proposed clarifying Memorandum of Agreement not be adopted.

II. New Article - "Furloughs-Cost Saving Days":

A. The Expired Contract:

Article 15 of the expired Contract provides for the layoff of employees as follows:

"Article 15 - Layoff and Recall:

"Section 1: In any case of an anticipated layoff of bargaining unit employees, by the Employer, the Employer shall notify the Union of impending layoff as far in advance as possible prior to service of notice on Employees."

"Section 2: The Employer may lay employees off for reasons of lack of work, lack of funds, or reorganization."

"Section 5: When employees are laid off, the Employer shall create and maintain a recall list for each classification. The Employer shall recall employees from layoff within each classification as needed. The Employer shall recall such employees according to Employer seniority, beginning with the most senior employee in the classification and progressing to the least senior employee up to the number of employees to be recalled to any classification where the employee has the skill, ability and qualifications to perform the work as determined by the Employer, and employees shall be on recall for a period of eighteen (18) months...."

B. The County's Proposal:

The County seeks to add a new provision to the Agreement which would allow a periodic one-day layoff of Bargaining Unit employees in lieu of subjecting them to furloughs or reduction in their hours. It would adopt, with appropriate modifications, the text of the "Cost Savings Days" provision authorized by Sections 124.392 and 124.393 of the Ohio Revised Code:

"Furlough - Mandatory Cost Savings Days:

"All full-time employees shall serve an unpaid furlough of ten (10) work days between the effective date of this Agreement and June 30, 2010. [sic] These days shall be designated as cost savings days (CSDs), and the Department reserves the right to schedule employees off on their CSDs. A cost savings day is one full work day or one full holiday. CSDs shall not be included in the definition of active pay status for the purpose of earning overtime or compensatory time. Entitlement to health insurance shall not be impacted for full time employees due to the CSDs. Employees shall continue to accrue vacation and sick leave while on CSDs. Also, CSDs will not impact seniority or service credit.

"Depending on the funds available to the appointing authority, this Article may be eliminated or modified. The CSDs program may be extended effective July 1, 2010 through June 30, 2011, or in conformance with future legislation that would extend CSDs to non-union employees beyond June 30, 2011."

C. The Union's Proposal:

The Union is unwilling to accede to the introduction of a Cost Savings Day authorization into the successor Agreement.

D. The Fact-Finder's Analysis, Findings and

Recommendations:

As precedent for its "Cost Savings Day" request, the County notes that its Garage employees, represented by the Teamsters, have entered into a Contract containing such a provision,² and that other Locals of ASFCME have agreed to cost saving days with employers including the City of Barberton.³

² "Article 29 - Furlough-Mandatory Cost Savings Days:

"All fulltime employees shall serve unpaid furlough days between the effective date of this Agreement and June 30, 2010. These days shall be designated as cost savings days (CSDs). Employees shall be scheduled off one (1) Friday per month by mutual agreement. CSDs shall not be included in the definition of active pay status for the purpose of earning overtime or compensatory time. Entitlement to health insurance shall not be impacted for full time employees due to the CSDs. Employees shall continue to accrue vacation and sick leave while on CSDs. Also, CSDs will not impact seniority or service credit.

"The CSDs program may be extended effective July 1, 2010 through June 30, 2011 whereby the employees shall be scheduled off one (1) Friday per month for ten (10) months as agreed to by the Employer and Employee."

³ "Appendix 'A' - Cost Saving Days (CSD):

"The Union accepts the Employer's proposal that each employee be required to take seven (7) cost saving days (56 hours) during the calendar year March 1, 2010 to December 21, 2010 under the following terms:

"1. Employees shall have their bi-weekly pay reduced by 2.545 hours for each of the twenty-two pay dates in calendar year 2010. In exchange for the 2010 reduction in pay, employees shall receive an allocation of fifty-six

(56) hours of CSD leave. Said leave shall be used by the bargaining unit employees between March 1, 2010 and December 31, 2010.

"2. CSD leave shall be taken at such time as the employee and supervisor mutually agreed upon. Employees' CSD leave requests are approved or denied based upon operational needs. All CSD leave must be requested and authorized on a form designated by the Employer and returned to the employee within three (3) work days.

"3. CSD leave shall be granted in increments of one (1) hour.

"4. CSD leave assigned for a certain calendar year as set forth above must be used during the calendar year and the dates specified above. CSD leave cannot be carried over from one calendar year into the next calendar year by an employee, and if not used by the employee shall be forfeited. In the event of such forfeiture, the reductions in pay set forth above shall continue to be applied to that employee at the same rate of pay as if he or she used all CSD leave.

"5. Employees shall continue to accrue sick and vacation accruals based on their ordinary hours worked (80 hours per pay for full-time employees), and those accruals shall not be reduced or diminished as a result of CSD leave. Additionally, service credit and entitlement to insurance benefits shall not be reduced or impacted by CSD leave.

"6. CSD leave taken during a pay period shall be included as hours actually worked and as active pay status for purposes of overtime or comp time.

"7. An employee shall not lose holiday pay for a holiday if he or she elects to take CSD leave on a day immediately preceding or following a holiday.

"8. Any employee hired from outside shall be required to use a pro-rated portion of the CSD leave and commensurate reduction in pay for the balance of March 1, 2010 through December 31, 2010.

"9. Employees who separate employment for any reason prior to the end of calendar year 2010, shall have their final

And, the State, itself, has entered into a Collective Bargaining Agreement with the Ohio Civil Services Employees Association⁴ which contains a cost saving days provision.

pay reduced by any CSD leave used by the employee that exceed the number of hours deducted from the employee's pay through the date of separation for that calendar year.

"10. CSD leave shall run concurrent with FMLA leave, Employees must use any CSD leave that they are able to schedule as the first day of any approved FMLA unpaid leave of absence.

"11. Any employee that has reached the maximum accumulation of vacation time set forth in Article 21, Vacation, shall be able to carry over into calendar year 2011 an additional amount of vacation time equal to fifty percent (50%) of the total CSD time required of that employee for calendar year 2010, in excess of the maximum vacation accumulation amount. Said employee must use the additional vacation accrual prior to December 31, 2012, and will forfeit any additional accumulation on December 31, 2012. While permitted to accrue the additional vacation time, as set forth herein, in the event said employee separates employment with the City prior to exhaustion of the additional accrued vacation time, he or she shall not be paid for the additional accrued vacation time, and the maximum payout for accrued vacation time shall remain the number of hours set forth in Article 21, Vacation."

⁴"36.11 - Cost Savings Days (CSD):

"Full-time permanent employees in bargaining units 6,7,9,13, and 14 shall take ten (10) days off without pay, for a total of eighty (80) hours, in each fiscal year beginning on July 1, 2009 and ending on June 30, 2011. The hours of a Cost Savings Day may not be less than the employee's regularly scheduled work day as defined in Article 13.02 or any hours remaining in the eighty (80) hour total. Cost Savings Days for bargaining units 3,4, and 5, any non-permanent employees (e.g., ETAs, seasonal, DRGs, etc.) and part-time employees in any bargaining unit will be assessed on the holidays listed under Article 26.01. This assessment will not affect compensation due

separately pursuant to Article 26.03 or 26.04 for hours worked on a holiday.

"The loss of pay shall be equal to 3.076 hours each pay period throughout the year. Employees on OIL, Salary Continuation, disability, or hostage leave shall also have a deduction of 3.076 hours each pay period throughout the year. Deductions made pursuant to this Article shall be made pre-tax.

"The Employer shall conduct a canvass once in each fiscal year in each work unit for full-time permanent employees in bargaining units 6, 7, 9, 13, and 14. The canvass results must be in place by July 1 of each year. The Employer shall indicate days which are not available and are identified as 'black out' days based on operational need. 'Black out' days may be work unit specific. Employees, in order of seniority, shall select days off. Subject to operational need, CSDs may include more than one (1) day up to the total of eighty (80) hours. The Employer retains the right to reject the selection based upon operational need. Employees who are unavailable during the canvass period (e.g., disability, Workers' Compensation, leave of absence, etc.) shall be permitted to schedule the appropriate number of CSDs upon their return, subject to the foregoing Employees who decline to schedule part of all of the CSDs shall be scheduled by the Employer. Employees on alternative schedules must take off the number of days that are the equivalent of a total of eighty (80) hours.

"In the event a Cost Savings Day is revoked by the Employer after institution of a canvass, the employee shall be permitted to substitute any other day at his/her discretion. Revocation shall not be arbitrary or capricious. Such a rescheduling may not be revoked. The employee shall also be reimbursed for any costs incurred as a result of canceling or returning early from the CSD upon submission of appropriate evidence. The Employer and employee may mutually agree to change a CSD. In the event the Employer prevents an employee from taking Cost Savings Days, appropriate corrections shall be made to his/her paycheck at the end of each fiscal year.

"Employees' leave accruals and health insurance shall not be affected by Cost Savings Days. Cost Savings Days/hours shall not be considered as active pay status for purposes

Although the Fact-Finder finds no imminent need for further reductions in personnel costs, whether through the transformation of full-time positions into part-time jobs, or the imposition of furloughs, he does understand the need for the County to plan for unforeseen and dramatic revenue curtailments or cost increases. In order to allow the County to be prepared to meet these contingencies, the Fact-Finder recommends that the parties agree to incorporate into the Contract a "Memorandum of Understanding" which, upon the happening of defined and limited "triggering" events, would allow the County, upon due notice to the employee or employees affected, to put into effect a discrete number of cost savings days, spaced so that not more than one such cost saving day occurs in any payroll period, and subject to the conditions that the implementation of cost savings days will have no adverse effect on benefit entitlements, seniority or service credit calculations, or vacation or sick leave accruals, and that the Memorandum contain a "sunset provision" so that the

of Article 13.10. In the event an employee leaves State service prior to the equalization of Cost Savings Days used and deductions made, appropriate corrections shall be made to his/her final paycheck or deducted from the employee's leave balances."

County's authority to activate cost saving days ends as of December 31, 2011.

Accordingly, the Fact-Finder finds appropriate and recommends the adoption of the following Memorandum of Understanding as an Appendix to the successor Contract:

Appendix _____:

Memorandum of Understanding:

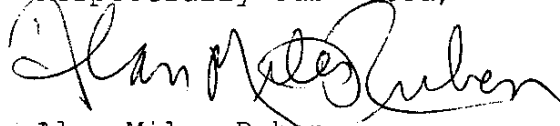
1. "The County may designate and implement up to five working days as furloughs or Cost Savings Days in 2011 upon the happening of either of the following two events: (1) the 2010 revenues allocated to Fund 157 are at least 10% lower than the 2009 revenues allocated to Fund 157, or (2) the 2010 expenditures from Fund 157 are at least 10% greater than the 2009 expenditures from Fund 157, provided that such increase is attributable to costs incurred beyond the control of the County.
2. "The County may designate and implement up to five working days as furloughs or Cost Savings Days in 2012 upon the happening of either of the following two events: (1) the 2011 revenues allocated to Fund 157 are at least 10% lower than the 2009 revenues allocated to Fund 157, or (2) the 2011 expenditures from Fund 157 are at least 10% greater than the 2009 expenditures from Fund 157, provided that such increase is attributable to costs incurred beyond the control of the County.
3. "A Cost Savings Day is a furlough of one full workday or one full holiday.
4. "Cost Savings Days shall not be included in the definition of active pay status for the purpose of earning overtime or compensatory time.
5. "Employees may not be scheduled for more than one Cost Savings Day per pay period and must be given two (2) weeks written notice of any such scheduled Cost Savings Day.

6. "Such Cost Savings Days shall have no effect on health insurance eligibility or benefits, sick leave or vacation accruals, seniority, or prior service credit calculations.

7. "This Memorandum of Understanding will expire on December 31, 2012 and will not be operative in 2013 unless mutually agreed upon by the parties."

Fact-Finding Report issued this 23rd day of July, 2010.

Respectfully submitted,

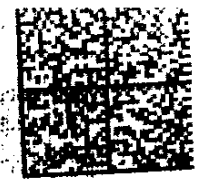
A handwritten signature in cursive script that reads "Alan Miles Ruben". The signature is written in black ink and is positioned above the typed name.

✓ Alan Miles Ruben
Fact-Finder

AMR:ljb



FIRST CLASS



Hasler

\$0.1390
07/26/2010
Mailed From 44114
US POSTAGE

**Cleveland State
University**



Ruben

Cleveland-Marshall College of Law
2121 Euclid Avenue, LB 138
Cleveland, Ohio 44115-2214

J. Russell Keith, Esq.,
General Counsel & Assistant Executive Director
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, OH 43215-4213

