**FACT-FINDING REPORT**
**STATE OF OHIO**
**STATE EMPLOYMENT RELATIONS BOARD**
**May 13, 2010**

In the Matter of:

Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1342 & 1342-P, AFL-CIO — 09-MED-09-0848

and

City of Troy, Ohio

# REPORT AND RECOMMENDATIONS OF FACT-FINDER TOBIE BRAVERMAN

## APPEARANCES

For the Employer:

Tom Funderburg, Assistant Director Public Service and Safety and Director of Human Resources
Sue Knight, Administrative Assistant

For the Union:

P. Scott Thomasson, Staff Representative
Michael Hinnegan, Past President
Timothy Larck, Trustee
William A. Phelps, President
Sabrina Blankenship, Parks Steward
Oscar R. Walters, Past Vice President
David A. Hathaway, Past President

## INTRODUCTION

The undersigned was duly appointed by SERB by letter dated April 5, 2010 to serve as Fact-Finder in the matter of the Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1342 & 1342-P, AFL-CIO (hereinafter referred to as "Union") and City of Troy (hereinafter referred to as "Employer") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until May 13, 2010. Hearing was held at Troy, Ohio on April 26, 2010. The Union was represented by Scott Thomasson, Staff Representative, and the Employer was represented by Tom Funderburg, Assistant Director Public Service & Safety and Director of Human Resources. The parties were permitted to present testimony and exhibits concerning each of the outstanding provisions on which agreement had not been reached. The parties have waived service of this Report via overnight delivery, and have agreed that statutory time lines will run from receipt of email delivery of the Report and Recommendations.

Pursuant to Ohio Revised Code §4117.14, the Fact-Finder has considered, to the extent submitted by the parties, previously bargained collective bargaining agreements, the comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally considered in the determination of issues submitted.

## FACTUAL BACKGROUND

The Employer is the county seat of Miami County, Ohio located in Southwest, Ohio approximately twenty miles north of Dayton. According to the 2000 census its population is approximately 22,000. The Employer is party to six separate collective bargaining agreements. Four of the Agreements are with the FOP in four separate bargaining units of police employees. The Employer additionally is party to an agreement with IAFF for its fire employees below the rank of

Assistant Chief. This fact-finding relates to the Collective Bargaining Agreement with the Employer's two AFSCME bargaining units which represent employees in the Employer's electrical, refuse, street, water plant, water distribution, sewage plant, sewer maintenance, cemetery and parks departments.[1] There are currently fifty-three employees in this bargaining unit. These parties have been bargaining since before the advent of Ohio's Collective Bargaining Law. The collective bargaining agreements for all of the Employer's bargaining units expired on December 31, 2009.

The parties met in bargaining on a number of occasions and reached agreement on a substantial number of contractual provisions. The Articles agreed upon, either in whole or in part, are referenced in attached Exhibit A, and those agreements and are incorporated herein by reference and adopted as part of the parties' final agreement. The Union presented proposed agreements to its membership on two occasions, both of which were rejected by the membership. This is the first time in their long history of collective bargaining that these parties have resorted to use of the fact-finding process. The Employer indicated at hearing that it did not wish to attempt mediation prior to hearing, and there was therefore no attempt to resolve the outstanding issues through mediation. The unresolved items on which the parties have failed to reach agreement are as follows:

Article 9 - Probationary Period

Article 20 - Union Dues Check-Off

Article 21 - Hours of Work and Overtime

Article 34 - Medical and Life Insurance

Article 36 - Wages

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[1] There is one collective bargaining agreement for this group. That agreement, however, contains two recognition clauses, one for the City of Troy Board of Park Commissioners for the parks employees, and one for the City of Troy as employer for the balance of the employees.

## ISSUES

### ARTICLE 9- PROBATIONARY PERIOD

Employer Position: The Employer proposes that the probationary period for promoted employees be increased from ninety to one hundred thirty days. This is the same probationary period applicable to new hires. Promoted positions generally involve additional responsibilities, and the increase in the probationary period would permit additional time for training and evaluation. If the employee is not retained in the promoted position, he would still be permitted to return to his prior position since there is no proposal to change that portion of the contract language. The change will therefore have minimal impact on promoted employees.

Union Position: The Union is unaware of any employee who has ever been sent back to his prior position after a promotion. Most promoted employees have typically worked in the position as an upgrade and are familiar with the duties of the position. The ninety day probationary period provides adequate time for training and evaluation. There has never been a problem with promoted employees adequately learning and acceptably performing their positions within the current probationary period, and absent a problem, there is insufficient basis to change the current language. Finally, comparable jurisdictions have lesser probationary periods for promoted employees than for new hires.

Discussion: As the Union points out, the Employer has provided no basis for the proposed extension in the probationary period for promoted employees. While the Employer argues that the additional probationary period would allow for more time to train and evaluate promoted employees, there was no evidence presented to demonstrate that there has ever been an employee who could not be sufficiently trained and evaluated during the current ninety day probationary period. The evidence presented at hearing demonstrated that shorter probationary periods for promoted employees as compared to new hires are common. In the absence of some evidence of a problem which the proposed change could resolve, there is simply insufficient

basis for extending the probationary period for promoted employees.

Recommendation: Current language.

**ARTICLE 20 - UNION DUES CHECK OFF**

Union Position: The Union proposes fair share language requiring that all bargaining unit members who are not members of the Union pay fair share fees to offset the cost of their representation. The Union is obligated by law to represent these employees, and it is only equitable that they pay their fair share for that representation. Seventy percent of bargaining unit members are also members of the Union, and the minority of thirty percent should be required to remit a fair share fee for the representation which is provided and from which they benefit. Several other comparable area collective bargaining agreements include fair share provisions, and it should also be included in this Agreement.

Employer Position: None of the Employer's other five collective bargaining agreements includes fair share language. The Employer is philosophically opposed to the fair share language proposed. Those employees who do not desire to join the Union should be free to make that choice. The Union should be obligated to convince those non-members to pay for the service. They should not be compelled by the terms of the Agreement.

Discussion: The Fact-Finder agrees with concept of fair share fees advanced by the Union. Contrary to the Employer's argument, fair share fees do not compel membership, but rather payment of a fee for representation and services which the Union is obligated to provide. As will be seen below, however, the Fact-Finder in this case has based her recommendations regarding other issues substantially upon internal comparables with the other bargaining units of the Employer. None of the other five collective bargaining agreements includes fair share language. That being the case, consistency and logic would dictate that fair share language should not be added to this Agreement at this time.

Recommendation: Current language.

**ARTICLE 21 - HOURS OF WORK AND OVERTIME**

Employer Position: The Employer proposes that the hours of work in an upgraded position should be increased from four to eight in a day before the employee is paid the pay upgrade of the higher rated position. An early proposal in negotiations concerned new language which would have permitted employees in lower rated jobs to upgrade their skills so that employees would be more flexible in their skills and abilities and which would reduce the need for upgrade pay. The proposal was ultimately abandoned after some discussion, but the Employer has maintained that portion of the proposal which increased the number of hours worked in an upgraded position from four in a day to eight in a day. This would alleviate the need for tracking employees on a four hour basis and reduce the overall cost of upgrade pay, which costs the Employer between twenty and thirty thousand dollars per year.

Union Position: Under the current system, employees are often pulled from upgraded jobs just short of the four hours needed to obtain the upgrade pay. If the hours in the upgraded position were increased from four to eight, this abuse would be increased, and many employees would never receive upgrade pay even though working routinely in higher rated jobs. Although the upgrade pay is an expense to the Employer, overall the Employer reaps a savings since much of the upgraded work is as a result of the higher rated positions being left vacant. Further, since it is the Employer which assigns work, the amount of the expense is entirely within its control. Employees should, however, be compensated when they perform work in a higher rated classification. One comparable jurisdiction provides upgrade pay after only two hours. The language should remain the same.

Discussion: Although upgrade pay clearly is an expense to the Employer, there was no evidence presented to demonstrate what the likely cost savings would be with the language change proposed by the Employer. Further although the Employer argued that tracking of employee upgrades would be simpler in eight hour rather than four hour increments, there was no evidence presented to demonstrate that the tracking is currently difficult or time consuming for

supervision. The evidence demonstrated that at least one employee who routinely performs four hours per day of upgraded mechanic work because the mechanic position has been vacant for some time would no longer receive any upgrade pay even though he would continue to perform the higher rated work if the hours required for upgrade pay were increased to eight. The equities dictate that under the circumstances of this case, the change in language is not warranted.

Recommendation: Current language.

**ARTICLE 34 - MEDICAL AND LIFE INSURANCE**

Employer Position: The Employer proposes that new language be added to the insurance provisions of the Agreement which permit the Employer to provide alternative insurance so long as that insurance is the same as that provided to its unrepresented employees in the event that annual premium increases exceed three percent. The historical figures presented regarding insurance demonstrate that the cost of insurance has increased dramatically over the years. In these current economic times, the Employer must be able to have more control over insurance costs in order to control its overall budget. The current insurance plan includes no deductibles, and is frankly a plan which is too expensive. The language change would permit the Employer to control insurance costs by changing plan design if necessary to keep premiums at a reasonable rate. The Employer has targeted the change in insurance as a priority in these negotiations, and the change is vital to its continued fiscal solvency.

Union Position: The Employer proposed the same language change regarding insurance in negotiations with the other bargaining units, and Fact-Finder Colvin recommended against the change in the IAFF negotiations. Although the City initially rejected the recommendation, it did not pursue its proposal to conciliation. Instead, it negotiated an agreement with both the fire and police bargaining units which retained the current insurance language. This bargaining unit should not be treated differently than the other five bargaining units. The Employer concedes that there is not an inability to pay, and in fact its premiums were reduced by 3% in its most

recent renewal. The contractual language should remain the same.

Discussion: As the Union stresses, although the Employer pressed its insurance proposal in order to exert additional control over its insurance costs, it failed to pursue the proposal to conciliation with the IAFF bargaining unit. Instead, it made a judgment that the conciliation process would be two expensive and was unlikely to yield the desired results, and conceded the issue in its five other collective bargaining agreements covering approximately ninety employees. This bargaining unit has always been provided with the same insurance as negotiated in those other bargaining units for as long as anyone can remember, and the Employer simply did not present any compelling arguments for its contention that this bargaining unit should be treated differently at this juncture. While the Employer's proposal will allow it to obtain and implement potentially less costly insurance plans, this savings may well be offset by the fact that for at least the next three years the size of its group would be halved by virtue of the fact that police and fire would comprise a separate group. The end result could well be that both groups are subject to higher premiums, eliminating any intended savings. This possibility has not been sufficiently assessed. While the Employer is legitimately concerned about the future of health care costs, it has not presented sufficient evidence to demonstrate that there is a sufficient fiscal crisis to justify denying this bargaining unit the same benefits provided to the other five bargaining units.

Recommendation: Current language.

**ARTICLE 36 - WAGES**

Employer Position: The Employer, like virtually all other area cities, has been hit hard by the current recession. Tax revenues are down substantially, and 2010 to date collections are down by 16% compared to last year. It is projected that the Employer will incur substantial deficits in the future. When Troy is compared to comparable area cities, it is clear that its wages are competitive. Under these circumstances, a 2% per year increase is generous. Many area cities are providing no wage increases. The Employer has agreed to provide this increase,

however, as a quid pro quo for relief on health insurance as discussed above. The increase should not be retroactive to January 1. While the Employer does not accuse the Union of bargaining in anything other than good faith, the bargaining unit has twice rejected proposed agreements. The increases should be effective from the date of ratification so that future delays are discouraged.

Union Position: The Union agrees with the Employer's proposal for a 2% wage increase in each year of the Agreement. It proposes further, however, that that increase should be retroactive to January 1, 2010, the effective date of the Agreement. Although the City also engaged in fact-finding with the IAFF bargaining unit and rejected the Fact-Finder's recommendations, it negotiated a settlement with both that bargaining unit as well as the police bargaining units with 2% wage increases in each year of each of those Agreements, with the first increase being effective March 1, 2010. There is no reason that this bargaining unit should be treated differently. The City has had the use of the withheld wage increase for this group since January. The members of this bargaining unit should not be penalized for rejecting the City's prior proposals and proceeding to fact-finding, especially in light of the fact that the City agreed to the same wage increases with other bargaining units and reached agreement with those bargaining units without obtaining the insurance concessions which it still seeks to tie to the wage increase for this bargaining unit.

Discussion: There is no question but that the Employer has been adversely affected by the recession, and the end result is that it cannot provide the more generous wage increases which it has provided in the past. The 2% increase which it has proposed and which has been accepted by the Union compares favorably to the comparable area jurisdictions presented, and, more importantly, is the same as the increases provided to the Employer's other bargaining units. While the Employer seeks to tie the increase to its proposed change in the insurance language, as discussed above, this linkage is unacceptable in light of the Employer's decision to concede this issue in the other bargaining units.

The parties conceded at hearing that although the Employer rejected the fact-finding report issued by Fact-Finder Colvin for the IAFF bargaining unit, the Employer agreed upon a 2% pay increase effective upon adoption by City Counsel on March 1, 2010. Thereafter, on March 30, 2010, City Counsel ratified the FOP Agreements on the same terms as the IAFF Agreement without pursuing fact-finding, making the wage increase effective March 1, 2010. For reasons not explained at hearing, the Employer did not agree upon the same terms with this bargaining unit, but instead proceeded to fact-finding. Under the circumstances, it appears to be the Employer's refusal to reach the same negotiated agreement with this bargaining unit as it has with its other five bargaining unit which resulted in the delay and necessity of fact-finding. These employees should be provided with the same wage increases as those provided to the employees in the remaining bargaining units. Their wage increase should, like the increases of the other bargaining units, be retroactive to March 1, 2010.

Recommendation: Two percent wage increases in each year of the agreement, effective March 1, 2010, January 1, 2011 and January 1, 2012.

Dated: May 13, 2010

Tobie Braverman, Fact-Finder

**CERTIFICATE OF SERVICE**

The foregoing Report and Recommendations was delivered via email this 13th day of May, 2010 to P. Scott Thomasson, AFSCME Staff Representative at Dayoc8@Ameritech.net and to Thomas C. Funderburg, City of Troy at thomas.funderburg@troyohio.gov.

Tobie Brayerman

EXHIBIT A

Article 1 Union Recognition/ Cooperation

Article 2 - Severability

Article 3 - Waiver of state Civil Service and Related Laws

Article 5 - Non-Discrimination

Article 4 - Waiver in Case of Emergency

Article 6 - Management Rights

Article 7 - Work Rules

Article 8 - No Strike/No Lockout

Article 10 - Seniority

Article 11 - Layoff and Recall

Article 12 - Posting/Promotions

Article 13 - Bulletin Boards

Article 14 - Position Descriptions

Article 15 - Personnel Files

Article 16 - Performance Evaluations

Article 17 - Health and Safety

Article 18 - Labor/Management Meetings

Article 19 - Union Business

Article 22 - Call-In Pay

Article 23 - Sick Leave

Article 24 - Sick Leave Conversion

Article 25 - Holidays

Article 26 - Vacations

Article 27 - Military Leave

Article 28 - Court Leave

Article 29 - Funeral Leave

Article 30 - Duty Injury Leave

Article 31 - Leave Without Pay

Article 32 - Discipline

Article 33 - Grievance Procedure

Article 35 - Uniform/Equipment Allowance

Article 37 - Longevity

Article 38 - Policies

Article 39 - Residency

Article 40 - Duration