**STATE EMPLOYMENT RELATIONS BOARD**
**STATE OF OHIO**

| | | |
|---|---|---|
| In the matter of Fact Finding between: | ) | SERB No. 10-MED-08-0979 |
| | ) | |
| CUYAHOGA COUNTY, | ) | Hearing: June 22, 2011 |
| Public Employer, | ) | at Cleveland, Ohio |
| | ) | |
| and | ) | Date of Report |
| | ) | July 6, 2011 |
| SERVICE EMPLOYEES | ) | |
| INTERNATIONAL UNION, DISTRICT | ) | |
| 1199, | ) | |
| Employee Organization. | ) | |



# FACT FINDING REPORT

Appearances:

Mitchell B. Goldberg, Appointed Fact Finder

For the County:

Egdilio Morales, Esq., Assistant Director of Law

For the Union:

Marquis Frost, Staff Representative

## I. Introduction and Background.

SERB appointed the undersigned as the Fact Finder for this public employment sector labor dispute on April 14, 2011. The parties agreed to hear the matter on June 22, 2011. They further agreed that the Report would be issued on July 6, 2011. Timely pre-hearing statements were filed with the Fact Finder in accordance with SERB Rules and

Guidelines setting forth the parties' respective positions on their unresolved issues with respect to a re-opener provision is the existing collective bargaining agreement ("CBA").

The bargaining unit consists of approximately 123 employees, 95 of which are Custodial Workers, 10 are Parking Attendants, and the remaining are classified in seven classifications; Groundskeepers (2), Mail Clerk Messenger (4), Maintenance Repair Worker (2), Radio Dispatcher (1), Stores Clerk (3), and Vehicle Operator 2 (3). The County employer has recently undergone a change in its governmental structure. The form of government now has a Chief Executive and a County Council. The existing CBA was negotiated with the County Board of Commissioners, Department of Central Services. Presently, the department that manages the above employees is now called the Department of Public Works.

The current CBA is in the third year of a term that expires December 31, 2011. The CBA was adopted after negotiations and the acceptance and ratification of a Fact Finding Report with recommendations from Fact Finder Robert G. Stein on October 26, 2009. The parties accepted his recommendation that:

> In the third year of the Agreement each bargaining unit member shall receive a lump sum payment of $250.00 in the first full pay period following the ratification of the wage/step movement re-opener by both parties for 2011. Any additional compensation and the resumption of step movements in 2011 shall be subject to re-opener negotiations.

This recommendation was incorporated into the CBA and the parties agreed to a negotiation procedure to resolve the re-opened issue. Either party could invoke Fact Finding through a MAD or through SERB in the event that they could not resolve the limited issue of additional compensation to be paid, if any, for the third CBA year. If the parties remain at impasse after the Fact Finder's recommendations, the Union may strike in accordance with the provisions of Chapter 4117 of the Revised Code.

The parties further agreed to a "me-too" clause in the CBA that provides that the unit shall receive the same amount of any wage/lump sum increase or the equivalent level of compensation as that subsequently negotiated between the County and any other bargaining unit for 2010 and 2011. This agreement was the result of an agreement between the parties to freeze the wage schedule for 2009 and 2010, the first and second contract years. Also, step increases were agreed to take place in 2009, but were frozen for 2010.

The issues to resolve are the amount, if any, wage increases that are to be paid in 2011, and the freezing of steps or unfreezing of steps for 2011. The following recommendations are made after reviewing and considering the evidence and exhibits submitted by both parties at the hearing, and their arguments with respect to their positions as reflected in their pre-hearing statements and at the hearing. The following recommendations consider and apply all of the statutory criteria set forth in Chapter 4117 of the Revised Code, and contained in SERB Rules and Guidelines.

II. Economic and Financial Evidence.

The poor financial condition and prospects for the County are not seriously disputed. The facts speak for themselves. Revenue streams continue to suffer from the recession and slow economic recovery. Unemployment in May for Ohio was 8.6% with a loss of 70,000 jobs in 2010. Unemployment claims are still high notwithstanding some job growth. A poor economy directly affects sales tax revenue, a major revenue stream, over one-half of the General Fund. Collections in 2009 declined by 23.2%. There was an increase of over 3.5% in 2010 over 2009. This was due to some new revenue sources that have now become taxable; however, collections for 2011 that show some increase in levels still remain far below pre-recession numbers. The County for budget purposes is projecting a modest increase in sales tax revenue.

Property tax collections, the other major revenue source, are still in the doldrums due to the poor real estate valuations for both residential and commercial real estate. The board of revision is deluged with an extensive backlog of tax reduction claims. Foreclosures remain at high levels notwithstanding a decrease from 2009 levels. However, the housing market is still stagnant due to the poor economy and the over supply of homes.

General Fund operating revenue will decline from $338.2 million in 2009 to $311 million in 2011. This is compared to $434.9 million in 2001, declining to $374.1 million in 2006, up to $394.1 million in 2007, and down to $338 million in 2009.

CPI is presently at low levels notwithstanding fluctuations in food and energy prices. This is reflected in the fact that social security recipients did not receive an upward adjustment in 2010 or 2011.

State budget cuts will directly affect the County because of the particular state reductions in payments to local governments. The County is expected to receive reductions due to the elimination of CAT reimbursements, the phasing out of property tax collections from utilities, and large reductions in the local government fund. The lost revenue is expected to be in the $3.2 million range in 2011, $14 million range in 2012 and $18 million range in 2013. The County must operate with a balanced budget, so further budget cuts will be necessary in the form of layoffs, cuts to overhead, and other measures that intend to provide acceptable levels of service with less available resources. The County plans to cut over $32 million from its programs including over $17 million from Human Services and Health and Safety, the existing social services safety net for its citizenry.

Major reductions have taken place in staffing levels through layoffs, retirements and program reductions. There was a major reduction from 2009 to 2010 of over 700 FTEs. This included 123 AFSCME unit members who accepted layoffs instead of an across the board wage freeze. The Custodial budget remains somewhat below the 2009 level, but new staff will be hired for the new Juvenile Justice Center.

III. Positions.

The County proposes to continue it's across-the-board wage freeze and a step freeze for 2011. This proposal is based upon the above economic facts and evidence. This is further supported by the fact that the County will continue a wage freeze for all non-bargaining unit employees for the fourth straight year. Six forced furlough days were implemented in the first six months of 2011, and more are being considered. More layoffs are being considered with related program reductions. In terms of other negotiated contracts, no other unit received the $250 lump sum payment provided in the first year of this CBA. Notwithstanding these poor economic conditions and the County's budgetary problems, these unit members are still being paid comparable wages and benefits to those doing similar work in both the public and private sectors.

The Union does not dispute the economic evidence. It raises concerns over what it believes is unnecessary spending in the capital projects portion of the budget. The County points out, however, that none of these contested expenditures and projected expenditures are from the General fund, the fund from which these employees are paid. Even if less money were spent in this area, any surplus that would be created would be diverted to bond interest reductions or allocated to different projects that the County needs to continue its operations and services.

The real concern from the Union relates to the individual financial problems that its members are suffering through that include flat wages and increased living expenses due to rising costs of necessary expenses regardless of the low CPI. These include high energy and fuel costs, increased medical costs and rising food prices. Moreover, members' homes are losing value while mortgages must still be paid. These are in many cases their major assets. Retirement costs are increasing through higher expected pension contributions. The wage rates are low overall, and the freezes that have been experienced have made matters worse to the point where families can no longer survive on these wages alone.

To make matters worse, AFSCME custodians and others performing the identical work as the employees in this unit received a 2% across-the-board increase while this unit accepted a freeze. They are now making 4% more than members in this unit performing the same work. The County recognizes this disparity, but negotiated the AFSCME contract before the major economic problems occurred. Afterwards, it proposed to AFSCME that it accept a roll back of the wage increase and accept a freeze like the other employees, or layoffs in its membership would need to be implemented. AFSCME rejected this offer, resulting in the layoff of 123 of its unit members.

The Union is proposing a 3% across-the-board increase for its unit and the restoration of its step increases for 2011. It computes the cost of its proposal in the amount of $133,616. It believes that the County can afford this amount and has the ability to pay these minimal increases to these employees who are paid among the lowest of all the County employees. The costs related to restoring the step increases for 2011 would only amount to $17,000. This would cover only 8 employees who are due step increases

. IV. Recommendations.

In the final analysis, the internal comparables must control the resolution of these issues. All non-bargaining unit employees and the other bargaining units except for AFSCME have been treated substantially the same. They are bearing the brunt of the poor economy and the County's budgetary problems. While these unit members are suffering more through these hard times because of their existing wage scales, there is no rational basis for treating them more favorably than the other employees performing necessary services for the County. Their prospects must rise or fall in some fair relationship with the other employees and bargaining units. I believe that AFSCME will be brought back to the fold during their next round of bargaining. Providing a 3% wage increase when no other bargaining unit member (except for AFSCME members) receives an increase does not seem reasonable at this juncture. Accordingly, I recommend no wage increase for 2011, the last year of the CBA.

The matter of step increases, however, is a different matter. These 8 employees have earned their stripes. They are performing work at the same level as others who have worked through the steps, but are being paid less for the same work. The cost to bring these employees up to their earned levels is minimal. I recommend that the step increases be unfrozen for 2011 and that the employees who have earned their step increase be paid what they are due.

Date of Report: July 6, 2011

Mitchell B. Goldberg

Mitchell B. Goldberg, Fact Finder

CERTIFICATE OF SERVICE

These following persons were served with this Report by U.S. Mail, First Class on the 6th day of July 2011:

J. Russell Keith
General Counsel & Assistant Executive Director
SERB
65 East State St., 12th Fl.
Columbus, OH 43215-4213

Marquis Frost
SEIU District 1199
1771 East 30th St.
Cleveland, OH 44114

Egdilio Morales
Assistant Director of Law
1219 Ontario St., 4th Fl.
Cleveland, OH 44115

Mitchell B. Goldberg

Mitchell B. Goldberg

oldberg, Esq.
l Mediator
ora Road
:nter, OH 44067


J. Russell Keith
General Counsel & Assistant Executive Director
SERB
65 East State St., 12th Fl.
Columbus, OH 43215-4213