

**FACT FINDER'S REPORT  
AND  
RECOMMENDATION**

**IN THE MATTER OF:**

CITY OF AKRON

AND

CIVIL SERVICE PERSONNEL ASSOCIATION, INC.

Case Number:

10-MED-10-1621

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

Tammy L. Kalail  
Assistant Director of Law  
City of Akron  
161 South High Street, Suite 202  
Akron, Ohio 44308

and

Susannah Muskovitz  
Muskovitz & Lemmerbrock LLC  
820 W. Superior Ave., 8<sup>th</sup> Floor  
Cleveland, Ohio 44113  
(For the CSPA, Inc.)

and

J. Russell Keith, General Counsel  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215

Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board on May 10, 2011 in compliance with Ohio Revised Code Section 4117.14 ( C ) ( 3 ).

Hearing was held on July 6, 2011 at Akron City Hall. Prior to the fact finding hearing, the parties engaged in two bargaining sessions and then declared an impasse. Informal discussions occurred following the official bargaining sessions. The parties submitted pre-hearing statements in a timely manner. At the onset of the hearing, the Fact Finder explored the possibility of mediation of the unresolved issue. The parties entertained the possibility of mediation in good faith, but then decided that it would be necessary for the Fact Finder to conduct a hearing and issue a Report and Recommendation. The actual hearing commenced at approximately 10:00 am.

This case involves a wage reopener pursuant to Article XIV of the collective bargaining agreement. Article XIV includes a 2.5% wage increase effective January 4, 2009, a wage reopener in 2010 and a second wage reopener in 2011. This Fact Finding involves the 2011 wage reopener.

## BACKGROUND

In analyzing the positions of the parties regarding the impasse over the wage reopener and then making a recommendation, the Fact Finder is guided by the principles that are outlined in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding 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.
3. The interests 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.
4. The lawful authority of the public employer.
5. The stipulations of the parties.

6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

During the course of the hearing, the parties had full opportunity to present exhibits, present testimony and engage in rebuttal of the submissions and arguments of the other party. The parties also submitted documents following the hearing, by agreement, for consideration by the Fact Finder.

The Fact Finder indicated that he would transmit written findings of fact and recommendations no later than July 22, 2011. By agreement of the parties, the Report and Recommendation will be transmitted in electronic format by way of email to the primary representatives.

Discussion of the issue at impasse, position of the parties and the recommendation of the Fact Finder follows.

ARTICLE XIV, WAGE CLAUSE  
2011 WAGE REOPENER

UNION POSITION:

The Union's proposal is a wage increase of 1.5% effective April 1, 2011. The Union states that this is a wage proposal that represents only three-fourths (3/4) of the contract year.

The Union represents a bargaining unit of Technical, Clerical and Professional employees from a number of Departments at the City of Akron. There are approximately 266 employees in the bargaining unit. CSPA membership has fallen, due to a shrinking work force, from 498 in 2001 to the current roster of 266 members (Un. Exb. 3, pg. 3). The decrease in membership was accelerated during the past year when the City Health Department was merged with the County Health Department and the City Building Department was likewise merged with that of the county. Those impacted by the mergers became county employees.

The Union argues that the City is easily able to finance the modest increase it has proposed for the 2011 wage reopener. Union witness, Frank A. Suponcic, is a Certified Public Accountant with the firm of Skoda Minotti. Mr. Suponcic has an extensive background in public accounting and has served as an elected public official. He currently is the Lake County

Recorder (Un. Exb. 2). He has been a key Union witness in a number of negotiations and impasse procedures at the City of Akron for a number of bargaining units.

The Union states that Mr. Suponic has a high level of knowledge regarding City of Akron finances, and it argues that the City has been less than credible regarding its fiscal health over the past few years. Following a recall election, the Mayor suddenly announced a fiscal crisis in 2009, but it was later determined that the announced deficit was exaggerated. Nevertheless, layoff notices were issued to many city employees, and City unions agreed to concessions. Layoff notices were rescinded. It was at this time that Mr. Suponic was hired by a number of the unions, and he testified, after an analysis of City finances, that the layoffs would not have been necessary.

Mr. Suponic testified, in the instant case, that 73% of the revenue from the city income tax is directed to the General Fund while 27% is dedicated to capital improvements. Compared to other cities, this split is unusual, and it ties the city's hands. He stated that the numbers projected by the City are not as bad as it would have the Union believe. During the bond rating in 2010, the City projected a decrease in revenue from income tax of 3%, but, at the end of the year, income tax revenues were down 1 ¼%. Mr. Suponic projects an increase of \$3.412 million in income tax receipts in 2011 based on current trends (Un. Exb. 1, pg. 1). He indicates that real estate tax receipts are \$35,000.00 less or .35% less than the same period in 2010. There has been a \$1.76 million increase in JEDD (Joint Economic Development District) funds compared to 2010. The Union states that, although the Local Government Fund has been significantly reduced, the impact in 2011, the period during which a wage increase should be funded, is minimized due to excess revenues received during the first half of 2011 (Un. Exb. 1, pg. 1). Inheritance Tax receipts will be reduced in 2011 by 5.4%.

The Union states that the cost of a 1.5% wage increase for the bargaining unit, effective April 1, 2011, which is three-fourths (3/4) of the contract year, is \$120,554. When the cost for PERS (pension funding) is added, the total is \$137,000.00 for the entire bargaining unit. Most of this cost would be funded by monies in the City's General Fund although a number of enterprise funds such as water and sewer would fund a small part of the increase for employees in those departments. The Union argues that it is clear that the City has the financial capacity to afford the increase.

Union witness Frank Suponic stated that the General Fund balance at the end of 2010 was the highest it had been in two years. He admits that the City is attempting to increase the year-end balance in order to maintain its bond rating. He asserts that the General Fund cash balance will have improved by \$2.75 million this year (Un. Exb. 1, pg. 6). Additionally Mr. Suponic projects an increase in the income tax cash balance of \$820,000.00 (Un. Exb. 1, pg. 7).

He believes that the City is able to allocate the \$137,000.00 to fund the Union's proposal for a 1.5% wage increase. This Union witness stated that the improvement in income tax revenues is driving his optimistic outlook that allows for the funding of the Union's proposal. He reminds the Fact Finder that the Local Government Fund, which was significantly reduced in the state budget, is only 9% of the City of Akron's budget, and the full impact of the reduction will not be felt until 2012 and 2013.

The Union argues that the City's information regarding the overall financial health of the City is flawed because it spent \$2.1 million more in June, 2011 than it spent during the same period in 2010. The Union states that it accelerated its payments out of proportion to its normal payment schedules. It will then spend less during the second half of the year. In a post hearing submission by the Union, Mr. Suponcic analyzed the City projections based on this occurrence. He determined that the City's "Best Case General Fund Position" shows an increase of \$2,588,612 in 2011 compared to the same point in time in 2010. He projected the "Adjusted Realistic Case General Fund Cash Position" to have increased by \$2,516,722. The City objected to the admission of this new exhibit since it was not comparable to an earlier exhibit presented at the hearing, and it was based on new headings which indicated an analysis for five months and four months. The Union responded that the five and four months headings were typographical errors and that the analysis was still based on data presented by the City, and it is an accurate description of the City's financial condition.

The bottom line to Union exhibits is to illustrate that the City of Akron is experiencing an improved economic climate in 2011, and it has the ability to easily fund the modest proposal it has submitted. When other bargaining units agreed to wage freezes early in 2011, a more complete analysis of the City's financial condition for 2011 was not available as it is now.

The Union also states that its members sacrificed to assist the City during its economic downturn. They agreed to a reduction in hours and pay in 2009 and deferred one-half of the longevity payment to 2012 (Un. Exb. 4). Again in 2010, the Union agreed to a reduction in hours and pay from June to September (Un. Exb. 5). Finally the Union agreed to further reductions in hours and pay in October and November, 2010 and again deferred a portion of the longevity payment to 2012 (Un. Exb. 6). Additionally, the significant loss of bargaining unit members has saved the city in personnel costs. The total cost of the bargaining unit in 2001 was \$18,345,381.60. The payroll cost in April, 2011 was \$12,216,118.50 annually. After negotiating a 2.5% wage increase in 2009, the Union gave back 1.92% to meet the fiscal needs of the City. In 2010, the Union agreed to no wage increase and then agreed to additional concessions that cost employees 1.8% in lost wages. The City now has the financial capacity to make up some of these losses in granting the small proposed increase of the CSPA.

The Union argues that the City clearly has the funding to meet its modest proposal for a wage increase in 2011 and urges the Fact Finder to recommend its 1.5% demand.

CITY POSITION:

The City's response to the proposal of the Union is no wage increase in 2011. The City is just emerging from the recession and revenue loss from the state is significant. There may be some slight increases in revenue, but the City has no rainy day fund. The City relies on its carry over for its positive bond rating, but these funds have diminished during the recession. Several City funds are carrying low or negative balances. The City appreciates the concession agreements by its Unions, but the longevity payments were only deferred until 2012. These payments will come due next year. The City made large payouts based on separation agreements, and there is no cap on payouts for those who are retiring. The FOP Conciliation decision cost the City a significant amount that was not planned, but at the same time the Fire Fighter's Union and AFSCME agreed to wage freezes in 2011. The City cannot award an increase to CSPA when other Unions agreed to freeze wages for 2011.

The City of Akron has a very rich benefit package. It pays 100% of employee health care. In addition, the City provides numerous other benefits including life insurance for employees and retirees. Personnel costs run high.

The Local Government Fund has been reduced in the state budget, and the City will realize a 25% decrease in the first budget year beginning in 2011 and a 50% cut during the second fiscal year. The state has decreased the tangible property tax, and the estate tax will be eliminated. These are sources of revenue upon which the City has depended.

Wage increases compound. The Union states that the increase will cost \$137,000.00, but, the City argues, that amount must be paid the following year and into the future.

The City states that median household income in Akron is \$34,069.00. This is four thousand dollars less than the regional average, and the median home property value is \$93,800.00 which is also less than the regional average (City Exb. 21).

While most of the CSPA bargaining unit members are paid from the General Fund, many employees are paid from funding sources that are experiencing deficits (City Exb. 37). As the Union indicated, 73% of the city income tax is placed in the General Fund, and 61% of the General Fund is allocated for safety services including police and fire (City Exb. 4). The city points out that the General Fund has suffered significant revenue declines over the past three

years. Total revenue was \$157,351,927 in 2008; \$146,787,476 in 2009; \$139,675,532 in 2010; and a slight increase is projected in 2011 at \$141,212,000 (City Exb. 6).

The City argues that, while income tax revenue is projected to increase by \$2,268,660 in 2011, other funding streams will decrease this year such as property tax, JEDD revenues, Local Government Fund revenues and service revenues. The tangible personal property tax will be eliminated. The City projects a total increase in overall revenue of \$1,102,868 (City Exb. 7). General expenses have increased in 2011 (City Exb. 8).

The City illustrates that it is working hard to increase economic development and has had success at attracting new jobs in the area (City Exb. 30 and 31).

The City argues that it is not able to fund a wage increase in 2011 based in part by the loss of Local Government Fund monies. 100% of local government funds are used to pay salaries of city employees. The City projects \$4,707,061 in lost revenue due to the loss of Local Government Funds in 2012 (City Exb. 12, pg. 2). In addition, the General Fund Property Tax has declined by 8.61% from 2008 to 2010 (City Exb. 14). The City has experienced significant foreclosures during the recession.

The City states that the General Fund year-end balance has declined (City Exb. 16). The balance on January 1, 2001 was \$8,198,431.56. The budgeted balance for 2011 is \$5,261,878.27. The unencumbered balance on December 31, 2010 was \$3,462,347.27. The City emphasizes that it has no rainy day fund as a safety net. The City has been urged to increase its cash balance by the various bond rating agencies, and Moody's recommended a 10% balance. The City's bond rating was downgraded by Fitch in November, 2010 (City Exb. 18) which has made it more expensive to issue debt. Fitch indicated that it was concerned about the reduction in the general fund reserves and "limited prospects for replenishment given the weakened economy and the city's substantial reliance upon economically sensitive revenues."

The City stated that the Akron City Council has the ability to raise property tax levels but will not do so based on high unemployment and the negative impact this would have on citizens and voters. In 2007 voters rejected a proposed increase in the City income tax.

The City has engaged in many cost savings initiatives in 2009 and 2010 (City Exb. 17). These included personnel reductions, furloughs, elimination of various employee benefits, reductions in funding for various community events and projects, travel restrictions for employees, reduction of hours at community centers and many other expenditure reductions.

The City argues that, based on internal comparables, it cannot meet the wage proposal of the CSPA. AFSCME, Fire and non bargaining unit employees received no wage increase in

2011 (City Exb. 19). The 1.5% increase granted the FOP in conciliation was an aberration and was not budgeted by the City. External comparables are also important as many city employees in the region received and/or bargained no wage increase for 2011 (City Exb. 32b). City employees in Parma, Hudson, Stow, Warren and Youngstown received no increase in 2011.

The City argues that it is not fiscally prudent to provide the proposed wage increase for the CSPA bargaining unit based on the fiscal condition of the City which is just now emerging from the recession. Cash balances are not sufficient to fund an increase, and the reduction of certain revenue streams and loss of others based on the state budget make for an uncertain future. And other employee groups at the City have agreed to a wage freeze in 2011. The City asks the Fact Finder to recommend a wage freeze for 2011.

#### DISCUSSION:

Both parties, the City and CSPA make strong arguments for their positions, and they have provided professionally prepared exhibits for consideration by the Fact Finder. The two primary witnesses at hearing, Frank Suponic, the Union's fiscal expert and CPA, and Diane Miller-Dawson, the City's Director of Finance, were well prepared and made excellent presentations.

The City of Akron has been negatively impacted by the recession as have most political subdivisions in Ohio. Unemployment, under employment, loss of industry and business, foreclosures and the rest have created large gaps in annual budgets as revenue streams have been significantly reduced. Property taxes and income taxes have obviously been victims of the economy. Akron city employees have stepped to the plate to alleviate some of the pressure by agreeing to income reductions as have their counterparts around the state. City employment levels have been dramatically reduced forcing employees to do more with less and citizens to go without previous levels of service.

The City of Akron has worked hard to maintain a balanced budget in this climate, and the CSPA has been a partner in finding and implementing cost savings. While the parties have characterized their relationship as sometimes contentious, it is obvious they have collaborated during these difficult times.

After the wage freeze of 2010 and the concessionary agreements, the Union feels that the City is now able to fund a modest wage increase of 1.5%. The parties have agreed in the past to wage increases commencing at the first pay period of the year, but the Union, in this case, has proposed that its increase become effective on April 1, 2011 as a cost savings feature

of the proposal. And the Union argues strenuously that the CSPA bargaining unit should be treated no different than police department employees, represented by the FOP, who were granted a 1.5% increase for 2011 through conciliation. The primary witness during the FOP conciliation hearing was Frank Suponcic who testified to the City's ability to fund the FOP increase in 2011 and future increases during the term of its new agreement with the City. Mr. Suponcic was the Union's primary witness in this case and has become an expert regarding the City's finances.

The Union argues, and it is a fact, that the City accelerated its payments for the year in June, 2011. In projecting or forecasting closing balances for the year based on July 1 figures, accelerating payments has the potential to cause an underestimation of ending cash balances, whether encumbered or unencumbered. Mr. Suponcic addressed this in the materials submitted post hearing, and the City objected to the submission. Mr. Suponcic's analysis has merit.

The parties disagree on what the cash balance of the General Fund will be at the end of the year, but both sides agree that income tax revenues have increased. With the loss of other funding sources, the modest recovery of the income tax will still allow the City to be in an improved financial condition at the end of 2011 compared to previous years. Nevertheless the future is unclear due to other revenue losses that the state budget has created.

One factor, which is outlined in the statute, ORC 4117.14 (G) (7) ( c ), is the employer's ability to finance the demand of the Union. But there are other criteria including internal comparables. The City argued that, until 2006, pattern bargaining existed between the various city unions since 1995, and non bargaining unit employees received the same increases. The City claims that this pattern was broken in 2006 when safety forces, police and fire, achieved higher wage increases than non uniformed employee groups based on fact finding and conciliation awards. City Exhibit 19 illustrates this well. Safety forces appear to be on one track or pattern, and AFSCME, CSPA, the Union for Nurses, when they were city employees, and non bargaining unit employees are on another track or pattern since 2006. What is important in this fact finding is the more recent deviation from the two track pattern based on the economic condition of the City. In 2011, the Fire Fighters Union joined AFSCME in agreeing to a wage freeze, and non bargaining unit employees also had their wages frozen. Except for the FOP's conciliation award, all other employee groups will not realize a wage increase in 2011. This is a significant factor to be considered in this fact finding case.

In light of the fact that other employee organizations and non bargaining unit employees will receive no increase in 2011, the granting of the CSPA proposal falls outside of the general pattern which has been achieved through collective bargaining. To grant an

increase to one group, even when the proposal is modest, at a time when other groups have agreed to a freeze based on the City's financial condition, runs contrary to the "interests and welfare of the public."

Although the City has obstacles to overcome with loss of revenue due to the impact of the state budget and other shortfalls, progress is being made based on improved income tax collections. The City and CSPA will be at the bargaining table later this year to negotiate a renewal of the collective bargaining agreement, and an improved local economy may hopefully allow the parties to arrive at an economic arrangement that satisfies both sides.

**RECOMMENDATION:**

A wage freeze is recommended for the 2011 wage reopener.

Respectfully submitted and issued at Cleveland, Ohio this 21<sup>st</sup> day of July, 2011.



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Thomas J. Nowel  
Fact Finder

Received Electronically @ SERB July 21, 2011 9:38am

This Report and Recommendation has been served upon Susannah Muskovitz, Counsel for the Civil Service Personnel Association, Inc., Tammy Kalail, Counsel for the City of Akron and J. Russell Keith, General Counsel, State Employment Relations Board via electronic mail on this 21<sup>st</sup> day of July, 2011.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

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Thomas J. Nowel  
Fact Finder