STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of:	:	
	:	
AFSCME Ohio Council 8, Local 7	:	**11-MED-03-0500, 11-MED-04-0562**
	:	
and	:	**FACT FINDING REPORT**
	:	**FINDINGS AND RECOMMENDATIONS**
City of Toledo	:	
	:	**August 24, 2011**

APPEARANCES

For the Union:

Steve Kowalik, Ohio Council 8 Staff
Donald Czerniak, President
Jeff Bright, Vice President
Rick Akeman, Chief Steward
Angela Tucker, Divisional Steward
Mike Corcoran, Sergeant at Arms
Lisa Miller, Recording Secretary
Cheryl Null, Secretary-Treasurer

For the City:

Ellen Grachek, Chief, Labor and Employment, Law Department
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I. BACKGROUND

The Fact Finder was selected by the State Employment Relations Board (SERB) on July 6, 2011, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period as provided under Ohio Administrative Code Rule 4117-9-05(G). They also agreed to extend the Fact Finder's deadline until August 24, 2011. The parties are AFSCME Ohio Council 8, Local 7 (Union or Association) and the City of Toledo (Employer or City). The Union represents governmental employees throughout Ohio. Founded in 1837, the City is the fourth largest city in Ohio, according to the 2010 Census, with a population of 287,208. Located in northwestern Ohio on the western edge of Lake Erie, it is the county seat of Lucas County. Known for its glass and automobile parts industries, Toledo has experienced economic difficulties along with many midwestern cities in the last decades of the 20th century.

The bargaining unit consists of approximately eight hundred (800) employees in various departments, including the Department of Public Utilities, Finance Department, Neighborhoods, Facilities & Fleet Operations, and Fire Department. Approximately three hundred fifty (350) employees work in the Department of Public Utilities. The unit was certified by SERB in Case No. 84-VR07-1584 and amended in 96-REP-04-0078. Beginning on May 3, 2011, the parties held ten (10) negotiation sessions to reach a collective bargaining agreement. They reached tentative agreements on a number of issues, which are incorporated into this report. However, they were unable to agree on a number of major items.

II. THE HEARING

The fact-finding hearing was held on Wednesday, August 10, 2011 at the offices of the Environmental Services Department, 348 South Erie Street. Each party provided a pre-hearing statement. The hearing began at 9:30 a.m and adjourned at approximately 5:30 p.m. The Fact Finder attempted mediation. However, it was necessary to issue this report.

The parties jointly introduced the following exhibit into evidence:

1. Agreement between the City of Toledo and Toledo City Employees' AFSCME Local 7, AFSCME Ohio Council 8, AFL-CIO, July 1, 2008 - June 30, 2011.

Additionally, the parties introduced the following exhibits into evidence:

<u>Union Exhibits</u>

1. Unit Seniority.
2. Overtime.
3. Accumulation and Payment of Sick Days.
4. Hospitalization - Prescription Drug, Dental Insurance.
5. Public Employees Retirement System of Ohio.
6. Base Annual Salaries.
7. Subcontracting and Federally Funded Jobs.
8. Mid Term Bargaining.
9. Zipper Clause.
10. City's Testimony of SB 5, SB 5 Summary Newspaper Articles and Correspondence.
11. Fact Finder's Report, Case No. 09-MED-09-1069.
12. Fact Finder's Report, Case No. 96-MED-04-03477.
13. Local 7 1993 PERS language.
14. Exigent Circumstances language, ORD 106-10-Local 7.
15. Exigent Circumstances language, ORD 108-10-Local 92.
16. SERB Benchmark Reports.
17. SERB Benefits Report.
18. Furlough language, Local 7.
19. Toledo Blade Article, 1-28-2009.
20. Toledo Blade Article, 1-29-2009.
21. Toledo Blade Article, 5-19-2010.
22. Subcontracting Exhibits.
23. Toledo Blade Article, 7-1-2011.
24. Toledo Blade Article, 7-3-2011.

25. Toledo Blade Article, 7-29-2011.
26. Toledo Blade Article, 6-1-2011.
27. Toledo Blade Article, 3-19-2011.
28. Toledo Blade Article, 10-19-2011.
29. Toledo Blade Article, 10-29-2011.

City Exhibits

1. Current collective bargaining agreement.
2. Memo re Local 7 new employees and terminations 01/01/2010 to present.
3. 2012 Projected General Fund Revenue Estimate.
4. Memo re Income Tax Report to Finance & Budget Committee.
5. UTAX Tax Collections 2011 v. 2010 (Reserve for Refunds).
6. UTAX Tax Collections 2011 v. 2010 (Pro Forma w/o stock option).
7. Income Tax Collections Cash Basis.
8. General Fund Expense Summary for 6 months ending 06/30/2011.
9. General Fund Expense Summary for 6 months ending 06/30/2011.
10. Labor Related Expenses for 6 months ending 06/30/2011.
11. Income Tax Revenues 2001 - 2011.
12. General Tax Fund Revenue 2001 - 2011.
13. Historical Medical Costs per FTE.
14. H.B. 153.
15. MetroMonitor, Tracking Economic Recession and Recovery in America's 100 Largest. Metropolitan Areas.
16. Toledo Income Tax Revenue Forecast for 2011.
17. Fitch Affirms Toledo, OH's Water Revs at 'AA-'; Outlook to Negative.
18. Fitch Downgrades Toledo, OH's Sewer Revs to 'A+'; Outlook Stable.
19. Monthly Unemployment Rate 2007-2011.
20. Information re Local 7 Employees.
21. Local 7 Pay Information.
22. Healthcare Snapshot.
23. SERB 2011 19th Annual Report on the Cost of Health Insurance in Ohio's Public Sector.
24. Benchmarking Analysis.
25. Chart re Employee Benefits Plan 7-2011.
26. Plan Document and Summary Plan Description for City of Toledo, Ohio Employee Health Benefit Plan.
27. PERS Contribution Percentages for each Bargaining Unit.
28. 2011 Municipal Employee Pension Plans Civilian Bargaining Unit.
29. Approximate Savings from Reduction in PERS Pick Up Amount.
30. Fact Finding Report, Case No. 10-MED-10-1621.
31. Fact Finding Report, Case Nos. 11-MED-03-0287, 0401, and 0402.
32. SERB Benchmark Report, August 4, 2011.
33. Local 7 Wage Comparison.
34. Grievances re subcontracting.
35. Grievance re subcontracting.

36. Grievance re subcontracting.
37. Grievances re subcontracting.
38. December 22, 2010 Agreement for Sub-Contracting Tree/Stump Removal.
39. Subcontracting re Trench Reclamation Project.
40. Subcontracting re Lockwood/DeVilbiss Sewer Separation.
41. Subcontracting re Ayers/Monroe Storage/Conveyance Pipeline.'
42. Arbitration Award, FMCS Case No. 10-51888.
43. December 23, 2008 ODOT letter to Gary R. Weinandy.
44. Toledo Blade article re City budget.
45. Toledo Blade article re recession.
46. Toledo Blade article re Toledo Public Schools levy.
47. Toledo Blade article re BAX Global.
48. Stateline article re state workers and health benefits.
49. New York Times article re health insurance and pensions.
50. New York Times article re state pension contributions.
51. Toledo Blade article re fact finding award.
52. Toledo Blade article re Lucas County employees.
53. Toledo Blade article re Bedford Schools agreement.
54. Toledo Free Press article re Toledo Blade and union negotiations.
55. Toledo Blade article re negotiations with union.
56. Toledo Blade article re Oregon City Schools contract.
57. Toledo Blade article re Toledo Public Schools contract.
58. Historical Sanitary Sewer Fund Balances.
59. Historical Water Fund Balances.

The issues remaining at impasse for the fact-finding included:

1. Unit Seniority.
2. Overtime.
3. Accumulation and Payment of Sick Days.
4. Hospitalization, Prescription Drug, Dental Insurance.
5. Public Employees Retirement System of Ohio.
6. Base Annual Salaries.
7. Subcontracting.
8. Federally Funded Jobs.
9. Mid Term Bargaining.
10. Zipper Clause.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

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

(2) Comparison of the unresolved issues relative to the employees in the bargaining unit 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) Any stipulations of the parties;

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Introduction

As with many cities in Ohio, the national economic woes have affected Toledo. The City has been hit particularly hard, however, and has experienced a decrease in revenues in recent years. Finance Director Patrick McLean testified that the City's economy and budget was fragile and that there was a structural deficit as expenses exceed revenues. Income tax equals approximately 60% of the City's general fund revenue and unemployment is back on the rise. After peaking at 14.3% in mid 2009, it dropped to 9.7% in early 2011. As of July 2011, it rose to 11.2%. Income tax collections peaked in 2007 at $169 million. They dropped to $141 million in 2009, rose to $144 million in 2010, and are projected to be $147 million in 2011. For 2011 to date they have increased from 8-11%.

Michael Bell took office as Mayor in January 2010. The City's 2010 budget had a $48 million dollar budget deficit. Bell testified that the 2010 budget was balanced with cost cuts, revenue increases, and transfers from other funds. The City bargained for and received concessions from its unions. Overall, it saved $17 million. It raised fees for garbage pick up and, in May 2010, voters approved allowing the City to transfer funds from the Capital Improvement Projects (CIP) fund. The City has used these funds, including $15 million to balance the 2011 budget, but there are insufficient funds to continue the transfers. After 2012, it cannot use CIP transfers. Additionally, the City tapped its rainy day fund before 2010 and it now stands at $50,000.

The state of Ohio has its own budget woes. As a result, it is cutting the money it provides to local governments. Toledo received $16 million in 2010, will receive about $13 million in 2011, and projects approximately $8 million in 2012. The casino referendum that Ohio voters passed provides for a casino in Toledo. It is scheduled to open in the second quarter of 2012 and the City projects $4.5 million in revenues from it next year. It does not equal the projected loss in local government funding, though. Further, Ohio has eliminated the estate tax effective January 1, 2013. This will eliminate another source of revenue. In 2010, the City received approximately $2.9 million in estate taxes. It projects $3 million for 2011 and $2.7 million for 2012.

The City has a .75% income tax that must be voted on every four (4) years. The next election is in 2012. Given voter attitudes toward taxes, the City is concerned it will not pass. If it does not, the City could eliminate most services except for police, fire, and the courts and revenues would still fall short. The Utilities Fund's water bonds rating was recently downgraded to negative by Fitch rating service, which may require a higher interest rate. This year, the City did ask City Council for and received rate increases of 9% for water and 3% for sanitary sewer services, but it was not as much as it requested (9.9% for water and 9% for sanitary sewer). Rate increases have historically been 4% every four years, but these increases were insufficient to cover increased costs. Somewhere between 60-70% of the rates go toward wage costs. Additionally, there has been an overall 2% decrease in water use, as customers shift to water saving devices, while the cost of operations has increased 5% due to the age of the infrastructure and more algae in Lake Erie, necessitating more water treatment. As a result, the Water and Sanitary Sewer fund balances have fallen.

On this record, the City has proved that it cannot pay or finance increases and needs cost reductions to balance its budget. It has cut costs, raised some revenues, and shifted money to balance its budget. Without long term cost cuts, particularly in labor costs, the City cannot balance its budget. The alternative is layoffs of City employees and cuts in services, which could result in continuing the downward spiral of employment, revenues, and the City's economy.

Issue: Seniority and Related Matters, Section 2117.40, Unit Seniority

Position of the City: The City proposes to amend this section by removing language that seniority is a factor in assigning work and referring to Divisional Agreements as to bid rights.

Position of the Union: The Union wants to maintain current language.

Findings: Under the current system, each Department indicates what work is available and employees select the jobs they want based on seniority. This means that, on occasion, employees who are more qualified to do a particular job select other work that is less strenuous. This results in less productivity and, at times, work that could be done better by someone else. The Union acknowledges the City's need to assign certain work based on qualifications. However, the genesis of this system was to protect employees from being assigned work solely at management's discretion, which could lead to favoritism, retaliation in assignments, and so forth. The Union's main concern is that employees are not assigned work solely at a supervisor's whim.

Recommendation: The language should be amended to follow seniority in the selection of work, except where management determines that an employee's qualifications, skills, etc. would enable the employee to better perform the work. This addresses the Union's concern that work should not be assigned solely at management's discretion. Section 2117.40 is amended as follows:

> Unit Seniority shall mean seniority in a classification within the unit and shall be used for:
>
> ***(a)*** Preference of vacations, bonus vacations,
> ***(b)*** Assignment of work, except where management determines that an employee has the individual ability, knowledge, skill, or expertise to perform a particular job so as to enhance operational efficiency.
> ***(c)*** Use of compensatory time and placement on the overtime rotating list.

(d) As one factor for purposes of alternate and provisional appointments as provided in Sections 2117.55, “Alternates,” and 2117.50, “Promotions,” paragraph (c).

“Unit” means an operational section based on common work and/or site location. Unit determination shall be mutually agreed to by the City and the Union.

Issue: Hours of Work and Overtime, Section 2117.71 Saturday & Sunday Shift Workers, 2117.74, Saturday Overtime, 2117.75, Sunday Overtime, 2117.76 Holiday Overtime, 2117.79, Saturday/Sunday Overtime Shift Work, and new section on Overtime and Holiday Overtime

Position of the City: The City seeks to eliminate double time payments.

Position of the Union: Maintain current language.

Findings: The City submits that double time provisions, as distinguished from overtime pay at time and one-half, should be eliminated. The Fair Labor Standards Act dictates overtime is to be paid at time and one-half. Double time is not contemplated. Given the City’s financial issues, eliminating double time will reduce costs.

The Union opposes eliminating double time. The City has put forward many concessions and double time is one way for employees to earn extra money. Many bargaining unit members are paid at relatively low wages. The added cuts proposed by the City will reduce their wages. Continuing double time provisions will allow at least some of the unit to earn extra money.

Recommendation: Keep current language.

Issue: Health and Welfare, Section 2117.98, Accumulation and Payment of Sick Days

Position of the City: Change the payout of sick time for employees hired after July 1, 2011. For employees hired after July 1, 2011, there is no limit on accumulation of sick time for use if the employee is sick. However, employees hired after July 1, 2011 can accumulate up to 1,000 hours for payment, but employees will be paid out for 1/2 of those hours, that is, up to a maximum of 500 hours, at retirement or separation. Reduce the annual allotment of sick days from 15 to 10.

Position of the Union: Current language.

Findings: For all employees, there is no cap on sick time for use. However, pay out of accumulated sick time at retirement or separation is based on the employee's hire date. If hired before June 30, 1993, there is no cap on the payout of sick time when an employee retires or is separated. If hired after June 30, 1993 and before July 1, 2011, sick time is paid out up to 960 hours. The City proposes that new employees hired after July 1, 2011 can accumulate sick time for use with no limit. However, these new employees will be limited to 1,000 hours for payment, but will be paid out only for 1/2 of the 1,000 hours (or 500 hours) at retirement or separation. It also desires to cap sick days at 10 days per year for use or pay out. That is, once an employee has reached his or her maximum accumulation, sick days must be used or paid out each year. They cannot be accumulated beyond the cap to be paid out at retirement or separation. The City contends this will cut costs as well as reduce sick time abuse.

The Union argues that sick time is accumulated so employees can use it as short term disability leave. For employees who limit their sick time, the payout can be used to supplement retirement. In this way, it can actually reduce sick time so employees can accumulate more time to be paid out. While it can be a significant cost to the City, this is a benefit that employees have worked and planned for. Reducing it is another hit to the employees' pocketbooks on top of the other concessions the City seeks.

As noted above, the City has proved that it has an inability to pay and finance its current costs. Sick time can be a significant cost to an employer, particularly when it can be accumulated and paid out on top of retirement benefits. The Union has a valid point that employees have worked and planned for this benefit. However, the City's proposal does not eliminate the cap on accumulation for current employees, only newly hired workers. While it does cut annual accumulation from fifteen (15) to ten (10) days, the latter still allows for sufficient sick time, especially when other time off permitted by the Agreement is considered.

Recommendation: The language of Section 2117.98 as proposed by the City is to be amended so that employees hired after July 1, 2011 accumulate sick days up to a maximum of 500 hours for pay out at retirement or separation. Sick time from July 1, 2011 going forward is capped at 10 days annually for use or pay out.

Section (b) of 2117.98 should thereby read:

> "After July 1, 2011, employees will be credited with **6 and 2/3 hours** sick leave for each month of service up to a maximum of eighty (80) hours, or ten (10) days, per calendar year."

Issue: Health and Welfare, Section 2117.106, Hospitalization-Prescriptive Drug-Dental Insurance

Position of the City: The City determines the plan design. Employees pay a 20% premium toward coverage.

Position of the Union: Increase the monthly premium by $15 in each year of the contract. Increase the emergency room fee from $65 to $100. Keep remaining language.

Findings: The City provides health care insurance coverage for its entire workforce, including the members of Local 7. Section 2117.106 of the collective bargaining agreement spells out in great detail the plan coverage, including medical, prescription coverage, and dental coverage. The current medical plan provided to Local 7 members is a major medical plan. Most services are covered by the City at 100%. It has an expansive provider network; there is virtually no limit locally to the employee's choice of doctor or hospital. Calvin Brown, Manager of the Human Resources Department, testified that it covers approximately 98% of doctors and hospitals in northwestern Ohio, from the Cleveland Clinic to the Indiana border and south to Lima, Ohio. It is a generous plan. When compared to other employer provided health care plans, the City's has no equal, in either the private or public sector.

The City pays the majority of the costs of this plan. The cost per full time employee was approximately $10,608 in 2010. In 2002, it was approximately $7,700. Employees pay a monthly premium payment of $25 for single coverage, $40 for single plus one coverage, or $55 for family coverage. The majority of Local 7 members have opted for family coverage. Additionally, employees pay a modest co-pay for doctor visits and for emergency room services. Overall, the City pays approximately 95% of all healthcare expenses, while employees pay 5%.

The City argues that the current plan is financially unsustainable. It is committed to providing excellent healthcare coverage to attract and retain a skilled and committed work force. Its proposal enables it to determine health care coverage so that coverage is consistent for all City employees, and thereby not subject to multiple permutations as a matter of collective bargaining. Maintaining a single plan design will control costs, including administrative costs. The City proposes to design the plan and that employees pay 20% of the "COBRA Rate" cost of their health care coverage so that the City can continue to provide a sustainable level of benefits. Its proposal also provides the same benefit to all City employees.

The Union counters that a 20% premium is too great an increase at one time. Taken with the City's other proposals, this would essentially cut employees' pay. Since many of the bargaining unit members are paid at relatively low wages, this could result in members being forced into welfare or having difficulty making ends meet.

There is no question that health care costs continue to be an important factor in collective bargaining. Often, they are the greatest cost and can be the most difficult issue to resolve. Costs continue to rise at percentages greater than the rate of inflation. It is no surprise that employers seek to have employees share a greater portion of the burden and employees seek to hold the line on any increases. At times, the increases in health care costs can more than offset any wage increases. It goes without saying that, in a situation such as this where the City proposes wage freezes, increasing the employees' share of health care costs make it even more unpalatable.

The City assured the Fact Finder and Local 7 that it does not intend to change the plan anytime in the near future. Indeed, it would like to maintain the current plan as a way to attract and retain employees. It simply seeks a way to control costs and reduce its share of the overall cost. It also proposes to meet with Local 7 during the remainder of the year to discuss ways to cut these costs. Control over plan design would simply make it easier to make changes when necessary to control costs. To help those in the bargaining unit who are paid at the lower end of the wage scale, the Union proposed a sliding scale whereby lower paid employees pay a lesser percentage of the premium.

The City has proved its need to save money. Control over plan design is one tool to do so. However, a 20% premium is simply too great. In the Fact Finder's experience, 10% is the average premium paid by public employees in Ohio. This is supported by SERB data provided by the City. (See City Ex. 23). The Fact Finder is also mindful that the cost of health care continues to rise at double digit rates and the City is in dire need of cutting costs.

Recommendation: Section 2117.106 is to be amended as below.

Existing section is deleted and replaced with the following:

(a) General Provisions: The City shall provide hospital, medical, surgical, major medical, outpatient diagnostic laboratory services, prescription drug, dental care and benefits under the terms and conditions as determined solely by the City.

(b) Employees shall continue to pay twenty-five dollars ($25) for single coverage per month, forty dollars ($40) per month for single plus one coverage, and fifty-five dollars ($55) per month until December 31, 2011.

(c) Effective the first full pay period of January 2012, employees will pay 7.5% of health care cost if making under $33,000 per year, 10% if making $33,000 or above. (The following costs are based on the 2010 COBRA rate. The rate is subject to change.)

	Effective January 2012	
Type of Health Care Coverage	<$33,000 7.5%	$33,000+ 10%
Single Employee Cost as of January 2012	$401.98	$535.97
Single +1 Employee Cost as of January 2012	$731.45	$975.26
Family Employee Cost as of January 2012	$980.24	$1,306.99

(d) Effective the first full pay period of April 2013, employees will pay 12.5% of health care cost if making under $33,000 per year, 15% if making $33,000 or above. (The following costs are based on the 2010 COBRA rate. The rate is subject to change.)

Type of Health Care Coverage	Effective April 2013 <$33,000 12.5%	$33,000+ 15%
Single Employee Cost as of April 2013	$669.96	$803.95
Single +1 Employee Cost as of April 2013	$1,219.08	$1,462.90
Family Employee Cost as of April 2013	$1,633.74	$1,960.49

(d) The City agrees to meet with representatives of AFSCME Council 8 within forty-five (45) days of the effective date of this Agreement to discuss measures by which the City can reduce its health care costs. These discussions shall be completed by December 31, 2011. The City, at its sole discretion, may implement any changes to the health care benefits under this section. The health care coverage existing on the effective date of this agreement shall remain in effect through December 31, 2011, or a later date as determined at the discretion of the City.

(e) The employee contributions under this section shall be based on the City's COBRA Rate for single coverage, single plus one coverage, or family coverage.

Present practice is that wages are paid twice each month, that is, 24 times per year. In a month with three paychecks, the third paycheck has no health care premium deduction. The above is based on the current twice a month, 24 time per year, practice.

Issue: Health and Welfare, Section 2117.107, Public Employees Retirement System of Ohio

Position of the City: Step down the City's pick up of employees' pension contributions as follows:

- 10% currently to 5% effective July 1, 2011
- 5% to 2.5% effective July 1, 2012
- 2.5% to 0% effective July 1, 2013.

Position of the Union: Reduce the City's PERS pick up contribution as follows:

- 10% currently to 7% effective July 1, 2011
- 7% to 4% effective July 1, 2012
- 4% to 0% effective January 1, 2013.

Findings: The City currently pays the employees' contributions to the PERS, that is, 10% for many employees. Those hired after January 1, 2009, however, pay their portion of PERS. The total cost per year to the City for the bargaining unit is $3,243,962. For the three (3) year term, it is almost $9.75 million. While eliminating this would save the City quite a bit of money, it would also be a significant reduction in net pay to bargaining unit members. Balancing the City's need to decrease expenses and reducing the impact on employees, cutting the entire pick up is too great.

Recommendation: For employees hired prior to January 1, 2009, the City's portion of employees' pension contribution is to be cut to 7% effective the first full pay period of January 2012 (a reduction of 3%) and to 3% effective the first full pay period of January 2013 (a reduction of an additional 4%).

Issue: Economic Fringe Benefits, Section 2117.117, Base Annual Salaries

Position of the City: No wage increases during the term of the contract.

Position of the Union: No increase in 2012, a 1% increase effective January 1, 2013, and a 3% increase effective January 1, 2014.

Findings: The City has established its need to decrease costs. Given current revenues, the City is not able to balance its budget without reducing expenses. Wage increases would be counter productive and would result in layoffs. The City's 2011 income tax collections are 8-11% higher than 2010, however, and the City projects 2012 collections to improve. This is particularly so if some of the scheduled building projects go forward as planned. As noted above, the casino project is scheduled to open in the second quarter of 2012 and the City projects revenue of $4.5 million from it.

During the fact finding hearing, the Union withdrew its proposal for wage increases in years two (2) and three (3) and proposed a wage reopener in the third year of the contract. The City countered with a reopener contingent on an aggregate increase in General Fund Revenues of 3.5% over 2010 revenues in 2011 and 5% of 2011 revenues in 2012. See Attachment 1. The Union objected that the aggregate increase would be too difficult to attain and would essentially be a wage freeze for all three (3) years. It proposed an automatic wage reopener for 2014.

The parties recognize that the wage reopener is no guarantee of an increase, only that the parties will meet to discuss one. Any wage increase will be based on the City's economic picture in 2014. If the City's revenues have increased, it might have money to pay awage increase. While the City believes its financial status will improve in 2012 and 2013, it is an uncertain prospect. If revenues are not sufficient or decrease, the parties understand there could be no money to pay an increase.

Recommendation: Wages are to be frozen at current levels for 2012 and 2013. For 2014, there is to be a wage reopener.

Issue: Other Provisions, Section 2117.128, Subcontracting

Position of the City: The City submits that subcontracting be permitted as long as it causes no reduction in force in the affected classifications.

Position of the Union: Maintain current language, but add a provision for expedited arbitration of subcontracting grievances.

Findings: The City contends that the current subcontracting provision impedes the City's ability to exercise its management right to direct the work force and set the City's work priorities. Since the Local 7 bargaining unit has gained members in recent months, it will not erode the bargaining unit. Finally, subcontracting enables efficiencies and project direction that the City has the right to determine.

The Union is understandably concerned that permitting unlimited subcontracting will erode the bargaining unit. The current language allows the Union to be notified of any subcontracting and demonstrate to the City that its members can do the work at a lower cost than a subcontractor. Expedited arbitration should help to resolve any disputes quickly.

The City should have greater flexibility in subcontracting. However, it should not be able to subcontract when doing so would cause a layoff in the affected classification so as not to erode the bargaining unit.

Recommendation: Section 2117.129 is to be amended as follows:

- **(a)** The City shall have the right to subcontract work performed by classifications in the Union so long as no Union members in the classification affected by the subcontracting are laid off.
- **(b)** Prior to any subcontracting of work or services, the City shall notify the Union, in writing, of the proposed subcontracting using the subcontracting form indicating the work to be subcontracted and the proposed start and completion dates.
- **(c)** Where formal bids are solicited, copies of bids specifications shall be furnished to the Union at the time the bids are solicited. No bid on the work from the Union is intended.

Issue: Other Provisions, Section 2117.131, Federally Funded Jobs

Position of the City: Amend the provision to reflect the original intent to allow City employees to take newly created federally funded positions.

Position of the Union: Current language.

Findings: The City claims that this provision has morphed over the years from its original intent. It was negotiated to allow City employees to bid on and take newly created positions that resulted from federally funded project. However, it now requires signing off whenever a construction project has federal funding of any amount and work can be done by City employees. Federal funding comes with many strings attached. These can require work to be done in a certain manner, by a certain date, or in other ways. Allowing bargaining unit members to do the work could jeopardize the funding. The City has had issues with federal funding sources because the work was not done in strict accordance with the funding.

The Union counters that there are a number of bargaining unit positions tied to federal funding. It is concerned that modifying the language could put these positions at risk.

Recommendation: Section 2117.131 is amended as below. Old language is stricken through, new language is underlined.

> <u>The following provisions apply to budgeted positions funded by the federal government</u>:
>
> (a) The City agrees that, when federal money is secured for new or existing federally funded programs budgeted positions, the Union shall be given notice that the position or positions are to be filled. City employees in the bargaining unit shall be given first opportunity to fill such new or existing positions within the federal guidelines established by the program before any new employees are hired.
>
> (b) If a regular employee in the bargaining unit desires the position <u>he or she</u> shall be given the right to fill the position in accordance with Civil Service Procedures and the resultant job opening will then be filled with the new employee.
>
> (c) All federally funded positions within the jurisdiction of this bargaining unit shall be in the bargaining unit and the Union shall have the right to represent the federally funded employee and collect dues from <u>the employee</u> in accordance with the provisions herein.

Issue: New Provision, Section 2117.xxx, Mid-Term Bargaining

Position of the City: Include a new provision to allow for mid-term bargaining in the event of exigent circumstances or federal or state legislative action that reduces City funding.

Position of the Union: Allow for mid-term bargaining, but provide for binding arbitration.

Findings: The parties agree to add a provision as to mid-term bargaining in exigent circumstances. They only dispute what the next step would be when there is impasse. The City wants non-binding arbitration, while the Union prefers binding arbitration. Both methods have advantages and disadvantages. However, any arbitration has the potential to result in an award that puts the parties in a worse position than where they started. Binding arbitration would require either or both to go to court to have it overturned, resulting in unnecessary expense. Non-binding arbitration gives the parties an unbiased view and provides them with a starting point to negotiate a possible better solution.

Recommendation: The Fact Finder recommends the City's proposal.

Issue: New Provision, Section 2117.xxx, Zipper Clause

Position of the City: Add a clause specifying that the written agreement is the entire agreement.

Position of the Union: A zipper clause is not necessary.

Findings: The current agreement has no zipper clause. There are several memoranda of understanding and a number of past practices. The City contends that side agreements and past practices have no written definition. Any agreements should be reduced to writing and included in the agreement, so the parties have a clear understanding of them. The Union argues that the City did not present a rationale for this provision. The Union believes the City is mainly concerned with the "me too" clause. However, the Union believes it is necessary because the City has historically been more generous with the safety forces. The "me too" clause keeps the bargaining unit from falling too far behind the other units.

Recommendation: No zipper or "me too" clause is to be included.

The Fact Finder hereby incorporates into this report the tentative agreements reached by the parties during negotiations.

Dated: August 24, 2011

/s/ Daniel G. Zeiser
Daniel G. Zeiser
Fact Finder

ATTACHMENT 1

Paragraph (b) in Section 2117.117 is to be deleted and a new paragraph (b) inserted as follows:

(b) Wage Reopener - January 2014

If the thresholds outlined in this paragraph are met, in January 2014 the parties will negotiate wages.

In the event the City achieves an aggregate increase in General Fund revenues in the categories listed below:

1. income tax
2. real estate/utility tax
3. real estate tax/police and fire pension
4. estate tax
5. personal property tax reimbursement
6. JEDZ income, and
7. local government fund (county and state)

"Aggregate increase" means the sum total of categories 1 through 7 above, as reported in the City's annual Comprehensive Annual Financial Report (CAFR) for fiscal years 2011 and 2012, respectively.

For calendar year 2011, 3.5% above the fiscal 2010 CAFR income for the categories outlined above as contained in the approved 2011 budget.

For calendar year 2012, 5% above the fiscal 2011 CAFR income for the categories outlined above.

The parties may meet on or after December 1, 2013 to negotiate a potential wage reopener that will take effect with the first full pay period of January 2014, in accordance with the provisions of Revised Code Chapter 4117.