Received Electronically @ SERB June 19, 2012 8:41am

IN THE MATTER OF FACT FINDING

BETWEEN

AFSCME, OHIO COUNCIL 8, LOCAL 2798

AND

NORTHEAST OHIO REGIONAL SEWER DISTRICT

SERB CASE # 11-MED-05-0836

Robert G. Stein, Fact-finder

ADVOCATE FOR THE UNION:

Greg Reimer, Staff Representative
OHIO COUNCIL 8, LOCAL 2798
1603 E. 27th Street
Cleveland OH 44114
griemer@afscme8.org

ADVOCATE FOR THE EMPLOYER:

Jon M. Delino, Esq.
ZASHIN & RICH Co. LPA
55 Public Square, 4th Floor
Cleveland OH 44113
jmd@zrlaw.com

INTRODUCTION

The parties to this matter are AFSCME OHIO COUNCIL 8, LOCAL 2798 (hereinafter "Union" or "Local") and the Northeast Ohio Regional Sewer District (hereinafter "Employer", "District"). The Employer is located in northeast Ohio. The bargaining unit is comprised of approximately two hundred and thirty (230) employees who work in a variety of positions for the District. The parties opted to attempt to mediate a resolution to their differences instead of going directly to fact finding. The fact finder assisted the parties in moving closer on the issues in dispute; several sessions were held and considerable progress was made on reducing the number of unresolved issues. However, not all issues could be resolved through mediation and as a result fact finding was invoked on the last day of mediation.

General/State/Local Economic Overview: Continued concern and general widespread uneasiness appears to be an apt characterization of the state of the current international, national economy and the local economy that by virtue of world interdependence can be impacted by the economic misfortunes of a small European country(s) located several thousands of miles away. The economy in Ohio continues to show signs of slow improvement from a very severe national recession that remains subject to the financial health of the United States and other countries, particularly those who are currently facing considerable debt in Europe, not to mention growing debt obligations of the United States. It remains to be seen if Greece will adequately address its economic problems and whether others such as Spain will become the next major crisis to plague the financial markets. The problem is significant with both Greece and Spain experiencing unemployment that is well over twenty percent (20%). It is remarkable and difficult to understand the reality of how the economic collapse of one European country can significantly undo months of economic recovery in the United States, but in the past month of May the stock market was evidence of that reality.

But that is just one set of concerns; others include high unemployment in many parts of the United States, a housing market that is just showing signs of slow recovery, the uncertain future

of national health care, and a presidential election, just to name a few. After months of substantial swings in the stock market on a weekly and sometimes daily basis in 2011, came a period of sustained growth and stability from January through April of 2012 generating a cautiously optimistic outlook that has now again shifted as the U.S. Stock Market has given back much of its 2012 gains and job creation has slowed considerably. What Americans have experienced from 2008 until the present has left a lasting impression about the uncertainty and fragility of the future and it has changed public attitudes. Additionally, it has left a lasting impression on employers and unions that the future must be viewed with a sobering reality not previously considered by the current generation of Americans prior to 2008. One just has to view recent elections in California where voters passed legislation to reduce pension benefits, and in Wisconsin, where according to exit polls, 38% of Union households voted to retain the Governor, who several months earlier had stripped union bargaining rights from many public sector employees.

The national unemployment rate is currently 8.2%, up from 8.1% a month ago. All the news is not underscored with tentativeness; there are states that have a low unemployment rate, such as Virginia, and there are some employers who are doing well and continue to do well in the aftermath of the recession. Detroit automakers are experiencing a comeback, extra shifts are being added, and that is particularly good news for neighboring Ohio. But, it is now a very different auto industry, with auto makers and their unions having agreed to substantial changes in wages and benefits to once again become profitable. The facts indicate that Ohio is in a very slow recovery that is still plagued by a lack of jobs that pay a living wage. Moreover, there are countless numbers of unemployed people who have, for the time being, stopped looking for work and are not counted among the unemployed. Hopefully, they will reenter the job market and find meaningful employment. Foreclosures in Ohio continue to rise in 2012. Several months ago what has been called the great recession was declared to be officially ended. Yet, for people in Ohio who are unemployed, underemployed, have experienced dramatic declines in their home values, face foreclosure, have given back benefits and paid days, have foregone wage increases for years, and have been laid off, such declarations ring hollow.

The District has a history of being managed prudently, and unlike many public employers in Ohio, including all employees of the state of Ohio, it has avoided a need to cut wages, benefits, require employees to accept unpaid furloughs and experience layoffs. And, while the bargaining unit has been reduced through attrition, the District and the Union continued to negotiate the current agreement during the darkest days of the recession, agreeing to wage increases that by any comparable measure at the time were very good increases. The years of the current agreement (2009-2011) saw many Ohio public employers and unions agreeing to one year agreements that included no increases in wages and major benefit concessions, reductions in wages by the implementation of unpaid furlough days. (e.g., the state of Ohio and its unionized employees have agreed to two consecutive three (3) year contracts that included no wage increases through 2014). But, Employer and the Union in this matter have through prudent management and a very well trained workforce continually sought ways to stay ahead of the curve that many other public employers could not avoid. The instant negotiations appear to be another point in time in which the parties can again have an opportunity to balance change in productivity with the ability to continue to provide increases in wages.

The fact finder is very familiar with the District, and some thirteen years ago was fortunate to be the neutral in negotiations where the parties created a highly ambitious training and education program that served as the foundation for evolving a very competent workforce. This 1999 negotiated agreement represented a "C-Change" in the way the District did business and created an efficient operation and workforce that would in large part make the District less vulnerable to privatization. In the instant negotiations the parties face what appears to be another moment in time where the economy, the Employer's revenue stream, job security for the bargaining unit, and public opinion dictate that the District and the Local need to somewhat depart from convention. And, as opposed to public employers in Ohio who have unfortunately had to reduce services, freeze wages, and ask unionized employers for concessions, the Union and the District have an opportunity to make contractual changes that seriously address an increase in productive time as a real way to provide for reasonable wage increases and the

maintenance of health benefits. In mediation the parties in part reached tentative agreement on training toward this end. The recommendations contained in this report, which are dependent upon the facts and statutory criteria and are in keeping with the history of the District and AFSCME who have not been afraid of agreeing to innovation change in serving the public.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

After starting negotiations early in May of 2011, negotiations stalled over several issues, but the main issue was the Employer's need to make major revisions in the training program. Mediation during fact finding resolved this significant issue. However, the issues that were unable to be resolved and were brought to fact finding were: 1. Wages, 2. Wage Inequities, 3. Productivity Improvements (rest periods and wash up time), 4. Health Insurance, 5. ½ Hour Change in Start Time, 6. Maintaining 12-hour shifts, 7. Leaves of Absence, 8. Early Retirement.

Discussion of the parties' positions and rationale for recommendations will be grouped by related issues that were linked in mediation.

1. **WAGES, 2. WAGE INEQUITIES, 3. PRODUCTIVITY IMPROVEMENTS (Rest Periods and Wash up time), 4. HEALTH INSURANCE.** The District proposes that wages be frozen for the first and second year of the Agreement and that there is no justification for inequity increases. The District also proposes an increase in productivity for paid hours by reducing unproductive paid time by thirty minutes per day. It contends that during the morning period there is considerable productivity that is lost by bargaining unit employees who have just started their day in terms of equipment preparation and who just began their work, to now have to stop work for 15 minutes. The District contends, when you factor in the time it takes to stop work, travel to a break area, then go on a break, and the time it takes go back to the work site, "gear up" to resume work, often a considerable amount of paid productive time has been lost, that far exceeds 15 minutes. The District also cites the fact that wash-up time of 15 minutes prior to lunch and at the end of the work day far exceeds the norm.

   In terms of justifying its official position of proposing a wage freeze for the first two years of the Agreement, the District argues that it is responsible for wastewater and storm water management in northeast Ohio, serving approximately one million residents. According to the Employer, massive capital expenditures needed to serve this

population had to be undertaken and have resulted in unprecedented rate increases. The rate increase imposed on the served population is an average of 13% over the next five years. These large expenditures flowed from a Federal Court Consent Decree as well as other needed improvements that resulted in the District taking on a debt load that will reach approximately $1.6 billion dollars by 2016. According to the Employer the service (or interest paid) on this debt load is approximately $100 million dollars a year and this reality has caused the employer to propose wage freezes in year one and two of the Agreement. And according to the Employer, its operations costs are projected to increase by $4 million dollars in 2012 alone. According to the Employer all of these factors have required the need for a very prudent approach to be taken regarding increases in wages. Additionally, during the past three years the bargaining unit received increases, when most other public employers were freezing wages. It should be noted that in attempting to negotiate a 30 minute increase in productivity, the Employer did indicate during mediation it may be willing to provide a 1% increase in the second year of the Agreement in addition to the 2% wage increase proposed for the third year. The Union proposes wage increases of 4% each year of the Agreement, and inequity increases. It disagrees that the District is in financial difficulty that can justify freezing wages for two years and asking for insurance concessions that in essence will amount to reduced income for bargaining unit members. The Union argues the District is a "….a financially stable employer" as verified by outside agencies. Moreover the Union points out the favorable financial ratings by reputable rating agencies have validated that the District's current and future financial condition is not only stable, but that the District is able to maintain excess cash reserves. The Employer proposes changes in health care to include the immediate elimination of the cap and employee premium costs being set at 20% (employee only), 15% (employee + 1), and 12% (employee and family) retroactive to May 1, 2012. In addition, the Employer seeks to change language of the Agreement to provide it more flexibility to choose carriers and affect plan design. The Union argues for maintaining caps on health insurance and proposes an ongoing health care committee to help control health care costs.

Discussion: The Employer's financial situation, due to significant debt caused by substantial infrastructure improvements and ongoing operating costs and assuming not productivity improvements, justifies in large part its position of no increase for 2012 and even possibly 2013. In addition, comparable public sector data also supports maintaining wages with little or no immediate change. It is recognized that is a change from the wage settlement history of the parties, but without a change in productivity the Employer makes a strong argument. However, a significant improvement in productivity substantially changes this view of the facts. And while the Employer initially sought to eliminate both formal break times, the fact finder finds that an approach which draws from the a.m. break and wash up time appears more reasonable in light of the gains to be made in productive time, allowing wage very reasonable wage increases in the first and second year of the Agreement. The productivity offset of 30 minutes that draws from a combination of eliminating a formal a.m. paid break and reduces wash up time to 5 minutes at lunch and 10 minutes at the end of the day is significant in terms of increasing productive time and does not change the afternoon break, which comes after several hours of work and particularly in summer is needed. For each employee the District stands to gain up to 2.5 hours a week in productive time. The current reality in collective bargaining in Ohio finds unionized employees having to make significant concessions, while attempting to preserve wages, benefits, hours, and employment when they can. Unions are facing an environment of trying to hold on to what they have and wage increases of any notable amount have been and continue to be rare. The approach taken in these negotiations of the reduction of paid unproductive time is far more preferable to the economic concessions being made by other public employees that affect wages, pensions, and hours, and result in layoffs. It is recognized that these changes, while requiring some sacrifice by employees in terms of adjusting to a work day without a <u>formal</u> morning break, still leaves in place personal time, as dictated by working conditions and evaluated by supervision. This is a concept that is already addressed in Article 19.3 of the Agreement regarding Plant Operations. It should

be noted that wash-up time on a comparable basis is commonly between 5 minutes and 10 minutes in the private and public sector. The 10 minute wash up time at the end of the day takes into account employees who may have to shower. With this change in productivity, the wage proposal of the Union becomes viable and justifies bargaining unit employees receiving a two percent (2%) increase the first year of the Agreement, retroactive to January 1, 2012 and additional 2% raises each of the last two years of the Agreement.

In summary, while the fact finder is fully aware that the elimination of a formal a.m. break and replacing it with what is the provided for other employees in Plant Operations represents a departure from decades of history. The times we find ourselves in are causing major changes in the way work is done. Simply put, the elimination of the formal contractual a.m. break combined with the reduction of wash up time increases productivity by over 6% (based upon a 40 hours week) and eliminates the need to freeze wages or have the bargaining unit agree to other major concessions. Instead it supports an additional 4% increase in wages over the first two years of the Agreement and continues to support a third year wage increase in the same amount.

The inequity increases proposed by the Union were discussed in depth in a subcommittee meeting of the parties during mediation that included the fact finder. From those discussions, the facts support an increase for the Machinist classification of .50 per hour. The productivity gain also justifies a substantial modification in the timing of the changes being sought by the Employer regarding health care (see Issue 4 below), substantially delaying the impact on employees in terms of out of pocket premium costs. The changes being sought in language by the Union to create an active health care committee are supported by the approach taken by many unions and employers in Ohio, including a health care committee that helps manage health care for all state employees. The fact finder does find that the changes proposed by the District to create greater flexibility in choosing carriers and making plan design changes in Articles 33.5

and 33.6 are reasonable and commonly included in public sector labor contracts in Ohio and elsewhere.

RECOMMENDATIONS:

1. **WAGES:** **1st year: 2% retroactive to January 1, 2012**
   2nd year: 2% effective January 1, 2013
   3rd year: 2% effective January 1, 2014

2. **INEQUITIES: .50 Per hour shall be added to the wage rate of the classification of Machinist retroactive to January 1, 2012.**

3. **REST PERIODS REST PERIODS:**

   Article 18 modify as follows:

   18.1 All employees shall be allowed **a five (5) minute** wash-up time prior to a lunch period **and a ten (10) minute period** prior to the end of their work day.

   18.2 Maintain current language

   Article 19 modify as follows:

   19.1 Employees working a regular eight (8) hour work day shall be allowed **one fifteen (15) minute afternoon rest period on each shift each work day. In the morning, employees do not have a formal break, but shall be given personal time as required under the direction of supervision.**

   19.2 The rest **period**, to the extent practicable**,** will be scheduled during the middle two (2) hours **of the afternoon shift, but it may not be able to be scheduled immediately after the meal period nor at the end of the shift.**

   19.3 Maintain current language.

4. **HEALTH INSURANCE: 33.4 2012: No change in health care coverage or rates**

Effective on or about January 1, 2013: Employee only: 20% of premium capped at $100
Employee + 1: 15% of premium capped at $125
Employee + family: 12% of premium capped at $160

Effective on or about January 1, 2014: Employee only: 20% of premium

Employee + 1: 15% of premium
Employee + family: 12% of premium

- **Beginning on or about January 1, 2013, employees opting for Kaiser coverage (or comparable HMO, if offered) must pay the difference of the premium costs between the Kaiser plan and the PPO plan plus the employee premium contribution.**

33.5 Modify as follows:

33.5 The District shall have the right unilaterally to change insurance carriers **and plan design** provided levels of coverage remain equal or better.

33.6 Modify as follows:

33.6 Employees who demonstrate they have an alternative coverage may elect to waive **major medical** insurance from the District and receive $200.00 per month in exchange for the waiver of insurance.

All other provisions of Article 34 shall remain the same, including maintaining the AFSCME Care Plan in Section 34.8.

New Section or add to existing Section: The parties shall form a labor/management health care committee that is comprised of an equal number of union and management members, in order to analyze the current health care plan, seek information about cost savings and plan improvements, and make recommendations for changes to the District.

5. **½ HOUR CHANGE IN START TIME, 6. MAINTAINING 12-HOUR SHIFTS, 7. LEAVES OF ABSENCE, 8. EARLY RETIREMENT** The Union is seeking to maintain 12-hour shifts for some 50+ employees of the bargaining unit, and to change hours of work from the current 7:30 a.m. to 4:00 p.m. to 7:00 a.m. to 3:30 p.m. for approximately 40 employees. The Union argues the preservation of the 12-hours shifts is essential to the work being performed and a change back to an 8 hour day would be less productive and would have a major impact upon the life of employees who have grown accustom to 12-

hour shifts and the compensation associated with it. The Union also contends that the starting time would not pose a major burden on the District and would have these 40 some employees brought in line with the hours of the vast majority of other 8-hour bargaining unit employees. The Employer argues that it wants to have the flexibility to eliminate the 12-hours shifts because it is difficult to fill such shifts in the case of absenteeism, and it is concerned about the amount of built-in overtime (8 hours per pay period) associated with such a schedule. The Employer indicates it has concerns with starting employees at 7:00 a.m. rather than 7:30 a.m. due to many municipalities having noise ordinances. Additionally, the District argues that the traffic pattern works against such a change.

With regard to leaves of absence, the Union wants any change to be placed into the bargaining agreement, but more importantly it prefers to maintain current language because of the ambiguity surrounding the District's proposal to incorporate by reference current policy that would replace current contract language regarding leaves. The Union insists it is not being intransient on this issue and that it is only reasonable to know what proposed language is being replaced by policy. The Union also proposed an early retirement system as a way to reduce wage costs for the Employer and to benefit the bargaining unit. The Employer rejects the Union's early retirement as being cumbersome and not specific as to immediate cost or potential cost savings. With regard to leaves of absence policy replacing current contract language the Employer insists that it would like to have one uniform policy and that the current policy is in some ways more generous (e.g. vacation eligibility). The Employer does acknowledge that the HR policy is not identical to the Agreement's language and there are some areas where the substitution of policy would differ from current contract language (e.g. bereavement leave) and would create an altered benefit.

Discussion. The Union's arguments are convincing and the facts provide greater support to the Union's positions on maintaining the 12-hour shifts and to changing the

starting hours for some 40 employees from 7:30 a.m. to 4:00 p.m. to 7:00 a.m. to 3:30 p.m. Additionally it may be efficient in the future to have HR leave policy reflect what is exactly in the Agreement, but for now the differences are not totally clear, which also lends support for the Union's position on maintaining current language on leaves. The Union reasonably objects to accepting policy language that has not been fully "vetted" and the fact finder concurs with this objection. The Union's language on early retirement is not supported by the facts. A program such as early retirement, prior to being implemented, must be fully evaluated as to whether it will produce real savings for an employer or whether it is simply giving money to employees who would retire regardless of the incentive.

RECOMMENDATIONS:

Article 20, etc. 12- Hour shifts, Maintain current language where applicable in the Agreement

Article 16, Section 16.3 The shift for Sewer System Maintenance and Operations employees shall begin at 7:00 a.m. and end at 3:30 p.m.

Article 24 Leaves of Absence, Maintain current language.

No early retirement incentive program.

TENTATIVE AGREEMENT

During negotiations and during and following impasse proceedings, the parties reached tentative agreements on several issues. The Memorandum of Agreement identified above, any and all tentative agreements, and any unchanged current language are part of the recommendations for a successor Collective Bargaining Agreement contained in this report.

The fact finder respectfully submits the above recommendations to the parties this _____ day of June 2012 in Portage County, Ohio.

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Robert G. Stein, Fact finder