

OHIO STATE EMPLOYMENT RELATIONS BOARD

2011-MED-10-1553

AFSCME Ohio Council 8, Local 3247)	Case No. XXXXXXXXXX
)	
)	
Union)	Fact-Finder
)	Judge Burt W. Griffin
and)	
)	<u>Fact-Finder's Recommendations</u>
City of Lancaster, Ohio)	
)	
Employer)	

On April 11, 2012, the Fact-Finder was appointed by the Ohio State Employment Relations Board pursuant to Ohio Revised Code Section 4117.14(C)(3) to serve in this dispute. The hearing deadline were extended by mutual consent to June 25, 2012. Because of surgery for the wife of the Union's president, the Fact-Finder extended the hearing date to July 27, 2012. The fact-finding hearing was held on that date at the South Water Treatment Facility of the City of Lancaster. (Hereafter, sometimes the City)

At the hearing, the Union was represented by Bill DeVore, staff member of AFSCME, Council 8. Also present for the Union were Roberta Stok, Regional Director, AFSCME Council 8; Brent Bownes, President, AFSCME, Local 3427; Troy Unger, treasurer, AFSCME, Local 3427; Bryan Cox, vice-president, AFSCME, Local 3427; and Jenny Ho, labor economist for AFSCME's national office.

The City was represented by attorneys Marc Fishel and Anne McNabb of Downes, Fishel, Hass, Kinn, LCP. Also present were Mayor David S. Smith, City Service Safety Director Michael

Courtney, and City Law Director Randall Ullom.

Background

The Union represents 132 of the City's approximately 400 employees. 125 of those bargaining unit members are employed in City departments not financed through the general fund.¹

The relationship between the parties has been covered by a collective bargaining agreement that ended December 31, 2011. Using interest based bargaining (hereafter IBB), negotiations for a new agreement began in November, 2011. The Union withdrew from IBB on February 10, 2012 but notified the City that it would submit to its members for a vote the City's proposal on wages, pick-up of employee's required retirement fund contributions, health insurance, and sick leave pay-out.

The Union's members rejected the City's proposal. Nonetheless, bargaining continued until April 12, 2012. At that time, negotiators—using the prior agreement as a basis for discussion—had reached tentative agreement as to Articles 1-8, 10-21, 23-33, and 35-49. Those tentative agreements are incorporated herein by reference as part of the Fact-Finder's Recommendations.²

The rejected City proposals are:

Article 50: Wages
2012—No increase

¹It is possible that some expenses of the departments are met by general fund revenues; however, the salaries of bargaining unit members are not budgeted to be paid by general fund revenues. The operating budgets of those departments are intended to be sustained by revenues generated by customer payments for the services of those departments.

² See Union Exhibits 3 & 4. The parties have also agreed that the contract would cover the period January 1, 2012 through December 31, 2014.

2013–2% increase

2014–2% increase

New Hires–reduce existing starting wage by 10% and 2013 and 2014 increases over 8 years

Article 34 Health Insurance

–Bargaining unit employees to receive same health insurance as all other employees and to pay 15% of monthly insurance premiums. City to have freedom to select insurance program it believes appropriate.

Article 22: Retirement Pick-Up

–Eliminate existing 3% pick-up by 2014 through reduction to 2% in 2012, 1% in 2013, and 0% in 2014.

Article 9: Unused Sick Leave and Vacation Pay

–Unchanged for existing employees

–New hires to receive on retirement unused sick leave and vacation pay up to a maximum of 960 hours to be acquired at rate of 32 hours maximum per year.

Those rejected proposals and the Union’s counter proposal were the focus of the fact-finding hearing.

To support its position the Union presented the testimony of labor economist, Jenny Ho, and numerous exhibits. Exhibits included wage plans currently prevailing in Delaware and Newark, Ohio; a fact-finding opinion related to Zanesville, Ohio; data for Lancaster, Ohio related to union members work assignments; pay ranges for all City employees, wage comparisons for City employees; benefit history for City employees; salary history for elected officials; fund information; annual financial reports for 2009 and 2010; and newspaper articles regarding City revenues in 2012.

To support its position, the City presented the testimony of Mayor Davis and Service Safety Director Courtney as well as numerous exhibits. The exhibits included wage settlement comparisons for City unions and other cities; history of general fund revenues, expenses, and

unencumbered balances; Auditor of State’s Fiscal Caution Guidelines; collective bargaining agreements (2012-2014) for firefighters and police in Lancaster; and fact-finders opinions for Circleville , Conneaut and Maumee, Ohio.

Applicable Law

Under Section 4117(G)(7) of the Ohio Revised Code, a fact-finder must consider the following factors:

- 1) The past collective bargaining agreement between the parties.
- 2) Comparison of the issues submitted to fact finding relative to the employees of 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 classifications 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.

Findings of Fact

Lancaster, Ohio is a growing, relative prosperous city of approximately 38,000 residents. In 2009, its per capita income was \$32,834—an increase of nearly \$5,000 per person since 2000. Its unemployment rate in 2009 was 8.5% compared to 9.0% nationally and 10.2% for the state of Ohio.³

³CAFR34, City of Lancaster, 2009 Financial Report at p. S-28 to 29.

Fairfield County, in which Lancaster is the county seat, is the fourth fastest growing county in Ohio.⁴ The largest employer in Lancaster is the Fairfield Medical Center—making Lancaster the center for regional medicine.⁵ Lancaster is also the home of the Anchor-Hocking glass company. Another favorable economic factor has been the addition of more than 1 million square feet of retail space since 2006.⁶

The City's general fund revenues exceeded expenses in 2009 and 2010. General fund deficits occurred in 2007, 2008, and 2011. The general fund budget projection for 2012 shows a slight surplus.⁷

On January 1, 2012, the City's general fund had an unencumbered carry-over balance of \$2,211,942. That figure exceeded one month's expected general fund revenue but was approximately \$1.5 million less than the carry-over balance recommended as a best practice by the Government Finance Officer's Association.

There is some evidence that the City's income tax revenue has been increasing in 2012.⁸ however, any increase in City income from income and property taxes may be fully offset

⁴City of Lancaster, Comprehensive Annual Financial Report for the Year Ended December 31, 2010 at p.vii.

⁵2009 CAFR, City of Lancaster 2009 Financial Report, p. S-30; City of Lancaster, Comprehensive Annual Financial Report for the Year Ended December 31, 2010 at p. vii.

⁶2009 CAFR34 at p.vii.

⁷Employer's Exhibit 6.

⁸Lancaster Eagle Gazette articles May 15 and June 12, 2012 quoting Lancaster City Councilman Tom Stoughton and City Engineer Brad Fagrell. Union's Exhibit 12.

by reductions in revenue from the state's estate tax and the its local government fund.⁹ The Fact-Finder does not have revenue or budget projections for 2013 or 2014.

The Union has argued that the City's ability to pay employees in the bargaining unit is not reflected by the City's overall budget or the status of the general fund. It says that 94.5% of the employees work in jobs that are financed by various enterprise funds—gas, sanitation, water, water pollution, and utilities plus a separate transportation fund. For that reason, its financial analysis is focused on the enterprise funds.

All but one of those funds had substantial unencumbered carry-over balances in 2011. The Fact-Finder does not have 2013 for 2014 budget projections for those departments or funds.¹⁰

Although the Water Fund ran a deficit of \$388,660 in 2011, it's available cash balance at the end of 2011 was \$3,109,280.37. That cash balance was 37% of 2011 expenses—enough to cover expenses for more than three months. Thirty seven (37) bargaining unit members (28% of the unit) are paid by the Water Fund.

The Water Pollution Fund in 2011 ran a surplus of \$1,308,342. It's available cash balance was \$5,357,049.20. For 2012, the City estimates an additional surplus of \$193,296.¹¹ Twenty (20) bargaining unit members (15.2% of the unit) were paid from the Water Pollution Fund.

⁹Counsel for the City has stated in his pre-hearing memo that revenue from the state's local government fund will decline by \$800,000 in 2013 and that it will also lose from \$500,000 to \$750,000 because the estate/inheritance tax is being eliminated. The Fact-Finder accepts those assertions although they are not formally supported by any City budget document.

¹⁰Union Exhibit 3 shows a projected "Budget" for each department in 2012 and 2013. The "Budget" figure does not show revenue or expense. Union Exhibit 23 shows a budget project for the Water Pollution Control and Division of Water for 2012. The Fact-Finder can not determine whether any particular fund or department expects a deficit or surplus in 2013 or 2014.

¹¹Employer's Exhibit 23.

The Gas Fund ran a \$1,400,814 surplus in 2011. It's available cash balance was \$8,928,874. Nineteen (19) bargaining unit members (14.4% of the unit) were employed in that department.

The Street Construction and Maintenance Fund ran a surplus of \$231,259 in 2011. It's carry-over balance was \$929,167. The City notes that employees in the streets department are paid from the general fund. Eighteen (18) bargaining unit members were employed in that department.

The Sanitation Fund ran a surplus in 2011 of \$444,221. It's carry-over balance was \$2,093,812. Eighteen (18) bargaining unit members (13.6% of the unit) were employed in the Sanitation Department.

The Utilities Fund ran a deficit in 2011 of \$214,530. It's available cash balance was \$140,195. Thirteen (13) bargaining unit members (9.8% of union members) are employed in the service department. The carry-over balance for that department was below accepted financial standards. The utilities department ran net surpluses in three of the prior four years and operating surpluses in every year. An explanation has not been given for these deficits. Deficits in the utilities department seem to have been caused by increased expenses for contract services.

Only seven (7) union members (5.4% of bargaining unit) out of 132 members work in positions financed by the general fund.

An examination of the City's overall finances, thus, reveals at least three sources of financial tension that affect the City and members of the bargaining unit: 1) The City's general fund finances are barely balanced and need to be carefully guarded. At least seven and perhaps twenty-five members of the bargaining unit depend on that fund for wages. (2) Thirteen members

of the bargaining unit work in the utilities department, whose annual funding is problematic. 3) The remaining 94 bargaining unit members (approximately 71% of the unit) work in enterprise units which are securely funded.

The Union and the City disagree as to whether the City's ability to pay wages to members of the bargaining unit should be judged by the condition of the general fund or by the condition of the separate enterprise funds. Against that background, the Fact-Finder examines the unresolved issues in this dispute.

Analysis and Recommendations

Article 9: Sick Leave

The City proposes that Article 9 of the existing collective bargaining agreement remain unchanged for employees "hired on or before December 31, 2011", but that the following language related to employees hired beginning January 1, 2012, be added as a final paragraph in Section 9.3:

Upon retirement an employee hired on or after January 1, 2012 and covered by this agreement shall be paid the equivalent of four (4) days (equivalent of thirty-two (32) hours) wages for each year of continuous employment with the city. This shall be paid out of the accumulated sick leave earned while employed with the City and that remains in their sick leave "bank", up to a maximum of no more than 960 hours.

The City's Position. The proposed revision has been adopted for non-bargaining unit employees and accepted by firefighters and police—the City's two other bargaining units. The City desires to make the policy uniform.

The Union's Position. The Union proposes that Article 9 remain unchanged.

Recommendation and Analysis: **The City's proposal should be adopted.** No financial reduction is imposed on any employee except those hired in 2012. The loss of income for the employee will not occur for thirty years, at the earliest. The City incurs no demonstrable savings for thirty years also. The importance of City-wide consistency and management's prerogative in determining sick leave incentives outweighs other considerations.

Article 22: Retirement Pickup

The City now pays 30% of the statutorily required payment by bargaining unit members into the state's Public Employees Retirement System(PERS). In January 2012, funds for non-bargaining unit employees and for members of other bargaining units, the City ceased making any payment of the employee's share into pension funds. Members of the other bargaining units have accepted the change. The City asks that the Unions members accept the same policy. The Union objects to the change.

Specifically, the City proposes that Section 22.1 of the collective bargaining agreement be amended by adding the following paragraphs prior to existing subsections 1) and 2):

For the period beginning January 1, 2012 through August 31, 2012, Article 22 shall remain in full force.

From the period beginning September 1, 2012 through December 31, 2014, the City of Lancaster shall no longer assume and pay on behalf of the employee, any employee portion of the member contributions to the Public Employees Retirement System. As a result, Article 22, Sections 2 through 5, shall no longer be in effect.¹²

The City has proposed that the change become effective on September 1, 2012 because it

¹²Employer's Exhibit 1. This proposal is different from the proposal that it claims the Union negotiators agreed to and sent to their members for a vote. See, Employer's Exhibit 12.

has already made irrevocable payments to PERS on behalf of bargaining unit members and can not recover that money. The unit's members have received the benefit of those payments to date.

City's Position. Citing a consideration often adopted by fact-finders, the City says that, as an obligation of "shared sacrifice" during difficult economic times, the Union should accept the abandonment of PERS pick-up. The City asserts that the AFSCME members are acting "under the same umbrella" as other City employees. It disagrees that 94.5% of wages for bargaining unit employees come from the general fund. It argues that the figure is probably between 70 and 75%. Other employees are foregoing payment by the City of the employees' pension obligation. So should AFSCME members.

Union's Position. The Union denies that the umbrella is the same for 94.5% of its members. It notes that the wages of the 94.5% do not come from general fund sources and the sources of their wages are not under financial pressure.

Recommendation and Analysis. **The City's payment of the employees' share of PERS should be reduced to 2% on September 1, 2012, to 1% on January 1, 2013, and to 0% on January 1, 2014.** The Fact-Finder is perplexed that the City claims that in February 2012 it proposed and the negotiators agreed to graduated reductions in PERS pick-up, but at the fact-finding hearing the City asked for immediate cessation of its payments. As the City said in its pre-hearing brief "The tentative agreement is the best evidence of what the parties experienced negotiators recognized as fair and appropriate" and "may provide substantial evidence of the proper resolution for the parties."¹³

Ultimately, the question of how much financial benefit an employee receives when the

¹³City's pre-hearing brief, p. 3.

City makes a payment on the employee's behalf is a wage issue. The City's termination of pension contributions reduces an employee's take-home pay. The issue of take-home pay for bargaining unit members can be considered when resolving the wage issue. The Fact-Finder will consider the impact on take-home pay of the City's discontinuing pension pick-up when considering the appropriate wage for bargaining unit members.

Viewed only as a policy issue and not as a take-home pay issue, the City's application of its proposed retirement pick-up policy to all other employees makes it appropriate for that policy to be extended to AFSCME members; however, the City's prior willingness to reduce its payments on a graduated basis is evidence of fairness to AFSCME members. Thus, in consideration of the City's prior willingness to accomplish the reduction through January 1, 2014 on a graduated basis, the Fact-Finder is recommending that the pick-up be reduced on a graduated basis until it is completely eliminated on January 1, 2014.

Article 34: Health Insurance

The City proposes that Sections 34.1, 34.2 (A), and 34.4(A) should be amended to read as follows:

Section 34.1

The Employer shall provide group medical insurance coverage, as selected by the employer, for each employee and dependents on the same basis as provided to non-bargaining unit employees of the City. The City will only provide one (1) family medical plan to those employees with spouses also

Section 34.2

A. Employee Premium Share

Effective January 1, 2012, bargaining unit employees shall pay 15% of the monthly health insurance premiums. These deductions will be made pursuant to the City's 125 plan.

deductions will be made pursuant to the City's 125 plan.
Section 34.4

¹⁴In 2010, the City secured its health insurance through the South Central Ohio Insurance Consortium (SCOIC). See, Lancaster City Auditor's Office, 2010 Financial Report, p. 73. The extent to which SCOIC limits the City's choice of insurance options is not clear to the Fact-Finder.

maintains two health insurance plans—one for the Union and another for all other employees. The City claims that this dual plan is costing the City \$24,500 per month more than if members of the bargaining unit were covered by the plan provided other employees.

The City concedes that the insurance plan now provided to the bargaining unit is “better” than the plan proposed by the City. The present plan has a premium cap of \$82 per month for single coverage and \$220 per month for a family. The proposed plan will have a cap of \$95 per month for single coverage and \$254 per month for family coverage.

Under the City’s proposal, increases in costs to the employee will be sustained retroactively to January 1, 2012. The City says that retroactivity is necessary to provide equal treatment to other employees. The City notes that the other unions have agreed to the City’s proposed insurance plan—which has been in effect for all other employees since January 1, 2012

Union’s Position. The Union has given no response to the City’s proposal other than to say that it desires to keep the same plan.

Recommendation and Analysis. The Fact-Finder recommends that the City’s proposal be accepted except that Section 34.2 (A) should read:

Effective September 1, 2012, bargaining unit employees shall pay 15% of the monthly health insurance premiums. These deductions will be made pursuant to the City’s 125 plan.

The basic idea put forth by the City is persuasive—that all employee should have the same insurance program and that all should pay the same portion of the monthly premium. A single insurance costs and benefits from the bargaining table to the City’s leaders. The City now plan for all employees simplifies the City’s task in shopping for insurance, increases the City’s bargaining power in the insurance market, and reduces costs to the City. The fact that such idea

employee's paying 15% of the premium.

The appropriate range of benefits to be provided is a matter of personal judgment for which there is no common answer. Because insurance benefits are related to medical needs, benefits are not uniformly distributed. Since City administrators will be beneficiaries of the same policy as employees and are aware of the needs of City employees, there is no reason to believe that the City's perception of needed benefits will be less valid than a bargained for definition of needs. The primary difference between a health insurance policy defined by City administrators and one defined by collective bargaining will be that the City's choice is more likely to be determined by cost to the City and the bargained for plan will be influenced to a greater extent by cost to the employee.

As with PERS pick-up, the Fact-Finder believes that those financial implications are best left to wage bargaining. Thus, the implication of the additional 1% of premium cost to be sustained by the employees will be resolved by the Fact-Finder when considering the appropriate wage change.

The Fact-Finder has not recommended that employees should pay retroactively for the additional premium costs because the Fact-Finder believes that the failure of the parties to reach a collective bargaining agreement prior to September 1, 2012 should not be assessed against either side.

Article 50: Wages

has already been approved by the City's other unions supports the merits of a single plan and the

January 1, 2014 coupled with no reduction in benefits. The increase totals more than 9%.¹⁵

In addition to changes in health insurance premiums and elimination of pension pick-up, the City proposes a wage freeze for 2012, 2% increases in 2013 and 2014, and a new wage scale for “employees hired after the effective date” of the agreement.¹⁶ The City proposes that the starting wage for new employees be reduced by 10% and that increases to the current maximum be spread out for new hires “over eight years (comparable to other City groups).”¹⁷

The net impact to the City would be a more than 4% wage increase¹⁸ counteracted by a total elimination of pension pick up costs and the reduced cost of new hires. Whether the changing of insurance programs and the shifting of some premium cost to the employee saves money for the City depends upon the total cost to the City of the insurance package.

The City asserts that it had a tentative agreement with Union negotiators for its proposed wage provision. Union negotiators deny that there was a tentative agreement. They state that they merely agreed to submit the City’s wage proposal—along with other proposals on which agreement had been reached—to the membership for its vote. The Finder-Finder, obviously, was not present during the bargaining sessions that preceded submission of the proposal to the Union membership. Without clear evidence that Union negotiators agreed to the City’s wage proposal, the Fact-Finder will not conclude that they did so.

¹⁵The Fact-Finder has not computed the impact of compounding 3% wage increases.

¹⁶The parties have agreed that the contract is to run from January 1, 2012 through December 31, 2014. Presumably, the City means that January 1, 2012, will be the “effective date” of this agreement

The Union seeks three 3% wage increases effective January 1, 2012, January 1, 2013, and

¹⁷Employer’s Exhibit 12.

¹⁸Again, the Fact-Finder has not computed the impact of compounding the 2% increases.

City's Position. Because the City believes that it had a tentative agreement with the Union's negotiators for a wage freeze in 2012 and 2% increases in 2013 and 2014, it says that its proposal should be accepted. The City further argues that the elimination of a 6% pension pick-up for police and fire in 2012 coupled with a 3% wage increase constitutes a 3% wage reduction for those employees. The City notes that historically AFSCME has been less willing than the police and fire unions to make wage concessions. For that reason, the City asserts that AFSCME members have unfairly been given favored treatment.

Most importantly, the City argues that its financial condition precludes giving AFSCME members more than the City is offering.

The City also refers the Fact-Finder to a November, 2010, recommendation of fact-finder Robert Stein in SERB case 09-MED-10-1143 in a case involving AFSCME and the City of Conneaut. It refers the Fact-Finder also to a determination by conciliator David Pincus's in three cases involving the Fraternal Order of Police and the City of Maumee in August 2009. In all cases, the decision makers gave priority to internal comparables. In the AFSCME case, the City of Conneaut faced substantial financial difficulties. In the FOP case, the City of Maumee did not claim inability to pay. Neither opinion indicated whether enterprise revenues were involved.

Union's Position. Boiled down to a colloquialism, the Union argues that comparing AFSCME workers to policemen and firefighters and comparing the revenue supporting AFSCME workers to the revenue supporting the police and fire departments is like comparing apples and oranges. The Union says that, for valid reasons, its bargaining unit in the City of Lancaster has always been treated differently from police and fire unions and that the revenue sources supporting its workers is far more ample than the revenue sources supporting police and fire.

The Union further refers the Fact-Finder to a May, 2012 recommendation of fact-finder E. William Lewis in SERB Case No. 11-MED-06-0934, involving AFSCME and the City of Zanesville. There the fact-finder granted compensatory wage increases for loss of pension pick-up plus 1% general wage increases against a city in difficult financial condition and enterprise funds that did not have surpluses.

Analysis of Wage Issues. Wage rates for public employees should reflect consideration of at least five factors: 1) the governmental body's ability to pay; 2) the fair market value for the employee's skill; 3) the history of the bargaining unit's pay relative to other employees of the governmental body; 4) benefits and opportunities available to the particular governmental worker that are not available to other governmental employees or those in comparable private employment; and 5) changes in the cost of living.

The City and the Union differ on the ability of the City to pay the increases sought by the Union. The Union argues that, because nearly 95% of its bargaining unit— a figure rightly disputed by the City—is paid by enterprise funds and those funds are solvent, the City can pay the 9% wage increase that it seeks.

The City denies that it can increase pay more than 4% over the three year period. Neither side has provided the Fact-Finder with actual cost figures for their proposed wage increases. Nor has either side indicated how much will be saved by the City and lost to the employees by the City's not paying the employees' 3% of their wages to PERS and increasing the employees' health insurance contributions from 14% to 15% of premium costs

Since at least 70% of bargaining unit members are paid from enterprise funds, the Fact-

and delay until 2014 full elimination of PERS contributions without jeopardizing the general fund.¹⁹

The determining questions, therefore, are whether an increase of more than 4% through 2014 is justified by other considerations and, if so, how much wage increase is warranted.

Wage increases for bargaining unit members are not necessary in order to make them competitive with similar workers in other cities. Except for the position of Waste Water Treatment/Plant Operator II, present wage levels for bargaining unit members are substantially above the average of wages in comparable communities.²⁰ The Union's ability to secure 3% or more annual wage increases for its members in each year since 2003 has undoubtedly contributed to that favorable wage level.

A critical factor, however, in determining an appropriate change in rate of pay is the effect that the City's ending its 3% contribution to the state's PERS fund will have upon the employee's take-home pay. If the City reduces its 3% payment beginning September 1, 2012, in accordance with the Fact-Finder's recommendation and without a wage rate increase, the employee's total reduction in earnings through December 31, 2014 will be 7%.²¹ That increase would not be

¹⁹The Fact-Finder has assumed that surpluses in particular enterprise funds either can not or will not be transferred to cover deficits in expenses covered by general fund revenues. Certainly bond restrictions in some of the enterprise funds may preclude such transfers. If, however, some surplus enterprise funds are transferrable to general or other fund activities, that would be a vehicle for covering general fund deficits. The transfers might be justified because employees in enterprise activities received wage increases not provided to other employees.

²⁰City Exhibit 4.

Finder believes that the City can increase wages for bargaining unit members by more than 4%

²¹1% reduction in 2012 (3% for 4 months) plus 3% in 2013, and 3% in 2014.

into account likely increases in the cost of living

Based on those considerations, the Fact-Finder concludes that an aggregate 6 % wage increase, rather than the employer's proposed 4%, between September 1, 2012 and January 1, 2014—if properly staged—would be fair to the employees and sustainable by the City. If properly staged, it would counter-balance the City's reduction of PERS contributions. It would not, however, compensate the employees for increased health insurance costs.

The Fact-Finder has considered the City's argument that AFSCME members should have the same level of "shared sacrifice" as other city workers but finds the argument unpersuasive. Past bargaining history supports the Union's argument that its members have not previously been required to have their wages gauged by wage negotiations with other City unions or by the status of the City's general fund.²²

Since 2003, there has been no year in which the percentage wage changes for police or fire equaled the changes for AFSCME members. Indeed, in every year that the police or fire received a wage increase, it was a higher percentage than for AFSCME members. In the one year when police and fire received no increase, AFSCME members received a 3% increase. Pattern bargaining by the City has not provided a wage increase through to AFSCME Fire and Police. The City, itself, recognized the lack of pattern when it offered in February 2010 to stagger its reduction of retirement fund contributions over a two year period.

There may be good reasons for this failure to have had pattern bargaining on wages and retirement contributions for AFSCME workers. First, for many of the activities of bargaining unit

²²Union Exhibit 5

stated: “the intent of the governing body is that costs of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges.”²³

Those services are gas, water, and sanitation—all services in which the Union is the sole bargaining agent.. Thus, if the gas, water, or sanitation enterprises lose money, the City can look first to economize on the wages of enterprise employees before seeking concessions from employees financed through the general fund. If those enterprises are profitable, its workers can hope to be protected by that profit.

The history of municipal ownership of public utilities for water, gas, electricity, and transportation supports the idea that the wages of city employees in municipally owned enterprises should be budgeted separately from employees in tax supported public services such as police, fire, courts, refuse collection, and parks. Originally, even water was supplied in urban areas by private companies; but, in the late 1800's and early 1900's, municipal ownership of water, gas, electricity, and transportation services became popular.²⁴ Lancaster, obviously, was a part of that municipal ownership movement.

Among the opportunities offered by municipal ownership of public utilities were lower prices for services, higher wages for employees, lower borrowing costs, and use of enterprise profits by the municipality to reduce taxes or cover other municipal costs.²⁵ Thus, it is reasonable that pattern bargaining has not prevailed in Lancaster for wages of AFSCME members—who are

²³2009 CAFR Report, p.38.
members, the City itself accounts for wages on an enterprise basis. As the CAFR report for 2009

²⁴See, HistoryLinks.org. Municipal Ownership Movement.

²⁵At Google, see [The Encyclopedia Americana \(1906\)/Municipal.ownership](#).

Other reasons that pattern bargaining has not prevailed in Lancaster are that police officers and fire fighters are in a different labor market from AFSCME members and that police officers and fire fighters are paid almost entirely from the general fund. When the City faces financial difficulty because of inadequate general fund revenue, it is reasonable for police and fire to share the sacrifice of others financed from the general fund.

Financial sacrifice for policemen and firefighters also is less threatening to family income. First, their pay is higher than AFSCME members so they are likely to have more of a wage cushion. Second, police officers and firefighters are also better able to compete in other job markets for off-duty and part time work. Thus, their City wages are not as fully reflective of their incomes as are the City wages of AFSCME members.

For all of the foregoing reasons, the Fact-Finder concludes that collective bargaining settlements for police and fire and wage changes for non-bargaining employees should not be determining factors in wages of AFSCME members.

Wage Recommendation. The Fact-Finder recommends that Article 50 of the collective bargaining agreement be amended to provide the following wages for bargaining unit members:

1.0% increase for present employees beginning September 1, 2012

2.0% increase for present employees beginning January 1, 2013.

3.0% increase for present employees beginning January 1, 2014.

Reduction of entry level hourly rate for new hires as requested by the City. Subsequent increases to reflect the above recommendations.
primarily enterprise workers.

Under the Fact-Finder's recommendation, the loss to bargaining unit members from reductions in the City's PERS contribution will be balanced by increases in wages. Their net

Their general standard of living will be reduced because the pay increases will probably not compensate for increases in the cost of living.

The Fact-Finder believes that those recommended increases are at a level that will not impair the general fund and can be responsibly absorbed by enterprise funds with respect to those employees who work in those enterprises. To the extent that bargaining unit members will pay higher health insurance premiums and will not keep pace with the cost of living, all members will partially “share the sacrifice” that is being made by other City employees.

S/Burt W. Griffin
August 9, 2012

Notice of Service

A copy of the foregoing Opinion and Recommendations was sent this 9th day of August, 2012, by E-mail to Bill Devore, bdevore@afscme8.org, Marc Fishel, mfishel@downesfishel.com, and Mary Laurent, State Employment Relations Board, mary.laurent@serb.state.oh.us.

Burt W. Griffin

take-home pay will be slightly reduced because they will pay higher health insurance premiums.