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**STATE OF OHIO  
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD  
IN THE MATTER OF THE FACT FINDING PROCEEDING IN  
CASE NO. 11-MED-10-1611  
AFSCME, OHIO COUNCIL 8. LOCAL 2982  
and  
THE CITY OF TIPP CITY  
FACT FINDING REPORT**

**Submitted by John F. Lenehan**  
**February 16, 2012**

**TO: VIA E-MAIL**

**Union Representative**

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## **FINDINGS AND RECOMMENDATIONS**

### **I BACKGROUND**

On December 28, 2011, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of AFSCME, Ohio Council 8, Local 2982 and the City of Tipp City. The parties mutually agreed to extend the filing of the fact finding report until, March 1, 2012, as provided under the Ohio Administrative Code, Section 4117-9-05 (G). A Fact Finding Hearing was held on January 31, 2012, 10:00 A.M., at the Tipp City Government Center, 260 S. Garber Drive, Tipp City, Ohio 45371-3116. Present for and on behalf of the Employer were John J. Krock, Vice President, Clemans Nelson and Associates, Inc. and Jon Crusey, City Manager. Present for and on behalf of the Union was David W. McIntosh, Staff Representative.

During the Fact Finding Hearing an unsuccessful effort was made to mediate the outstanding issue of wages. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue his report on February 16, 2012.

#### **A. Description of the Bargaining Unit**

The parties are the AFSCME, Ohio Council 8, Local #2982 (Union) and the City of Tipp City (Employer). The Bargaining Unit consists of employees in the City's Service Departments. These include the Electric Department (8 employees), the Street Department (4 employees), the Parks Department (3 employees), and the Water Department (8 employees). The classifications covered by the agreement include: 1) Maintenance Specialist I; 2) Maintenance Specialist II; 3) Groundsman; 4) Utility Plant Operator I; 5) Utility Plant Operator II; 6) Equipment Operator; 7) Apprentice Lineman; 8) Journeyman Lineman; 9) Tree Trimmer/ arborist; and 10) Water Treatment Plant Operator.

Tipp City, located north of Dayton, Ohio, was incorporated as a city with a council – manager form of government in 1960. According to the 2010 census, it has a population of 9,689 and covers an area of approximately 7.5 square miles. It has seventy (70) employees; twenty-three (23) are in this bargaining unit and nineteen are police officers in the FOP

bargaining units. In addition to police protection, the City operates seventeen (17) parks and provides electric, water, sewer and refuse (billing only) services to the community.

### **B. History of Bargaining**

The parties have a Collective Bargaining Agreement in effect through November 30 2012. Under the provisions of Article 41, Section 41.2, of that agreement, the City and the Union agreed to re-open negotiations in accordance with ORC 4117 for wages only to be effective December 1, 2010 and December 1, 2011. The parties have negotiated wage rates effective December 1, 2010 (1% on base rates and 1 % lump sum). However, no agreement has been reached on the wage reopener to be effective December 1, 2011. The parties met and negotiated on November 17, 2011 and attempted mediation on December 6, 2011 without success.

## **II CRITERIA**

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications involved;
- 3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

### **III ISSUE AND RECOMMENDATION**

#### **Issue**

#### **ARTICLE 17**

#### **WAGES**

The Union has proposed a wage increase of 3% to the base pay rates effective December 1, 2011. The Employer has offered a 1% wage increase to the base pay rates effective December 1, 2011, and a 1% lump sum payment. The lump sum payment would be based upon an employee's hourly rate times 2080 times 1%, and it would be paid to all bargaining unit employees with the first full pay of July 1, 2012.

#### **UNION'S POSITION**

The Union claims that the Employer will argue that AFSCME #2982 is a non-conciliatory "strike" bargaining unit and should be treated disparately worse than the FOP bargaining unit. According to the Union the police received their negotiated pay increase without the assistance of conciliation. In addition the Union claims that the Employer will attempt to compare non-bargaining units to employees covered under the Union's collective bargaining agreement. Also according to the Union, since non-bargaining unit employees are under the sole control of their employer making a comparison between the bargaining unit member's wages and their wages is irrelevant.

The Union's position is that all bargaining unit employees should be treated equitably and not disparately. According to the Union the Employer cannot show an inability to afford and pay for its requested wage increase of 3%. Thus, they ask the Fact Finder to rule in favor of the Union.

In support of its position, the Union submitted into evidence the following documents: 1) a copy of the Comprehensive Statement of the City's Operating Budget, consisting of six (6) pages; 2) a copy of the City Manager's Operating Budget dated November 14 , 2011 submitted to City Council as required by the City Charter, consisting of approximately one hundred and

forty (140 )pages; 3) a copy of the wage settlement with FOP on behalf of the Sergeants: and, 4) a copy of the wage settlement with the FOP on behalf of the Patrolmen.

During the hearing the Union expressed that it would be opposed to any lump sum payment. According to the Union any settlement for wages would have to be on the base pay rate. Lump sum payments do not increase the hourly rates, and result in bargaining unit employees falling behind in the wages paid to employees of other governmental entities who perform similar work.

### **EMPLOYER'S POSITION**

The employer proposes a 1% wage increase to the base pay and a 1% lump sum payment. The lump sum payment will be based upon the employees' hourly rate times 2080, times 1%. The current agreement is a three (3) year agreement effective December 2009, expiring November 30, 2012. There was a wage freeze the first year of the Agreement (2010); the second year (2011) there was a wage reopener and the Union agreed to a 1% increase to the base rate and a 1% lump sum payment. The employer is offering the same proposal for the third year (2012) of the Agreement.

The Employer submits that the Union will argue that the Police Agreement, which also expires this year, provided for a 3% increase to the base wage rate of pay for 2012 and that they should receive the same increase. However, the Employer believes that the two (2) unions are separate and should be treated separately.

In addition, the Employer states that it will show that the bargaining unit employees have received the same pay increases, or more, than the Employer's non-bargaining unit employees including the City Manager. Their wage increases the past ten (10) years have far exceeded the increase to the median income for Tipp City and the inflation rate. Thus, the Employer requests that the fact finder grants its position.

In support of its position the Employer submitted into evidence the following documents: 1) population study of thirteen (13) area cities with populations under 21,000 residents; 2) an analysis of the pay rates for the area cities that have similar or the same job classifications as those in the bargaining unit (four pages, Employer's Tab #7); 3) a chart and bar graph analyzing median household income against bargaining unit wages; and, 4) a comparison of the wages increases granted to the City's employees since 2004 to present.

## **FINDING AND OPINION**

Based upon the prehearing position statements and the evidence submitted at the hearing, it appears that the Employer has the ability to pay some increase in wages. In fact it has proposed a 1 % increase in the base wage rates, plus a 1% lump sum payment. The Employer's projected budgets prepared by the City Manager and submitted by the Union indicate that the Employer is, at this time and for the next few years, financially sound. The City Manager Jon Crusey in his cover letter of November 14, 2011, that accompanied the submission of the 2012 budgets to City Council made the following statements.

The preparation of the 2012 budget was again challenging as income tax receipts are projected at a 7% increase but the long- term outlook for the economy is still questionable. Furthermore other sources of General Fund Revenue are declining. Specifically, the State has reduced the Local Government Fund and is phasing out the Personal Property Tax Reimbursement resulting in a reduction of \$212,263 in state funding for 2012. Additionally, as interest rates remain at historically low rates and the estate tax, which has benefited the City over the past few years, is unpredictable and therefore estimated conservatively. “

\* \* \*

Sound long term financial planning of past Council's and administrations' has placed the City in a position to continue to withstand the current economic climate, in the short term. The purpose of building up reserves during a period of good economic climate is to be able to utilize those resources to maintain service levels during weak economic times. The City's General Fund and Electric Funds are well positioned to maintain adequate fund balances, based upon the assumptions but forward in this budget document. The Water Fund, and more specifically the Sewer Fund, show rapidly declining fund balances over the next five years that will require a rate increase to maintain adequate fund balances in order to meet current operating needs and future capital projects.

. There was no evidence submitted of the Employer's inability to pay or provide for wage increases during the next year. The question is: what, if any, wage increase is appropriate for the employees in this bargaining unit?

Normally, considerable weight is given to both external and internal comparables in making a recommendation as to an appropriate wage increase. Evidence was offered regarding external comparables. The first was an analysis of the pay rates for the area cities that have

similar or the same job classifications as those in the bargaining unit (four pages, Employer's Tab7). This analysis indicates that while most starting wages are lower for Tipp City employees, they are higher at the maximum step. Also, the wage rates for the bargaining unit employees appear to be reasonably competitive with those of the other cities.

The second external comparable, submitted by the Employer, was the chart and bar graph analyzing median household income against bargaining unit wages. This exhibit established that bargaining unit employees received a higher percent of wage increases than received by the median households over a ten year period. It also established that the median wages of Tipp City residents were higher ten years ago than that of the bargaining unit employees, and ,that the media wages of the residents were still higher ten years later for three of the four bargaining unit classifications used in the analysis.

While external comparables are to be considered and to be given some weight, the two comparables set forth above are not helpful to either the Union or the Employer. In the opinion of the Fact Finder the wage comparison while more favorable to the employer's position is insufficient to support the granting or denial of any wage increase here. As to the analysis of median household income against bargaining unit wages this is meaningless because there are too many variables and unknowns. A bargaining unit is being compared to a transient population of different trades, professions and income sources. This comparable could be more supportive of the Union's position if it were to seek parity with median household income.

In this case, considerable weight should be given to internal comparables. Although there is merit in the Employer's position that the bargaining units should be treated separately, the settlement with other bargaining units is relevant. Also, the pay to non-bargaining unit employees is to be considered. For the period 2004 through 2011, the FOP bargaining units received 3% more in wage increases than the AFSCME unit. For the same time period the AFSCME unit received 2.5% more than the non-union employees. The wage increases for both the AFSCME and the nonunion employees were identical until 2009. At that time, the AFSCME unit received a 2.5% for 2009, no increase in 2010, a 1% increase on the base rate and a 1% lump sum in 2011. The non-union employees received no increase in 2009 and 2010 and 1% on the base rate and a 1% lump sum in 2011.

The Union seeks parity with the FOP. It argues that it should receive the same wage settlement as the FOP and that it should be treated equitably and not disparately. Few can disagree with this statement. However, it assumes a similarity of circumstances that goes beyond the mere fact that both the FOP and AFSCME are in a bargaining unit. No evidence has been

presented as to similarity of duties, funding, education, training, licensing or other circumstances.

For this reason there is insufficient evidence upon which this Fact Finder can form an opinion and make a decision as to the equity or the equality of treatment. Had the pattern of pay increases for all groups remained the same, the Union's position for a 3% increase would have greater weight. However, that was not the case. The pattern was broken, or not followed, in 2005, 2009, 2010 and 2011 (See Exhibit submitted on Historical Wage Increases). In view of this, the Union's request for a 3% increase on base pay cannot be supported.

Likewise, the Employer's proposal of a 1% lump sum payment cannot be supported. While lump sum payments may be suitable on a one time or temporary basis to make adjustments or to accommodate economic circumstances, they should not go on indefinitely because they skew the wage schedules, create uncompetitive pay rates and impact future benefits. There is no evidence justifying a lump sum payment in this matter.

Based upon the pre- hearing statements, the evidence submitted at the hearing, and the proposals of the parties, a 2% increase should be granted on the base pay rate for all employees effective December 1, 2011 for the duration of the collective bargaining agreement.

## **RECOMMENDATION**

Therefore it is the finding and recommendation of the Fact Finder that the employees in the bargaining unit be granted a 2% increase to the base rate of pay, effective December 1, 2011 through the term of the existing collective bargaining agreement.

## **IV**

## **CERTIFICATION**

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted January 31, 2012. Recommendations

contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan  
John F. Lenehan  
Fact Finder

February 16, 2012

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**PROOF OF SERVICE**

This fact-finding report was electronically transmitted this 16th day of February, 2012, to the persons named below.

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/S/ John F. Lenehan  
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