

IN THE MATTER OF FACT FINDING

BETWEEN

THE CITY OF NORTON, OHIO

AND

AFSCME, OHIO COUNCIL 8 AND LOCAL 265

SERB CASE # 2012-MED-08-0748

Robert G. Stein, Fact-finder

LEAD ADVOCATE(S) FOR THE UNION:

**Michael A. DeLuke, Staff Representative
AFSCME OHIO COUNCIL 8
1145 Massillon Road
Akron, OH 43085
mdeluke@afscme8.org**

LEAD ADVOCATE(S) FOR THE EMPLOYER:

**Paul L. Jackson, Esq.
ROETZEL & ANDRESS, LPA
222 S. Main St. Suite 400
Akron, OH 44308
pjackson@ralaw.com**

INTRODUCTION

The parties to this matter are AFSCME Ohio Council 8, Local 265 (hereinafter "Union") and the City of Norton, Ohio (hereinafter "Employer" or "City"). The Employer is located in northern Ohio. The bargaining unit is comprised of approximately nine (9) employees who hold numerous positions in the City's Service and Maintenance Department as identified in Article 4 of the Collective Bargaining Agreement.

General/State/Local Economic Overview: Caution and disquiet appear to be an apt characterization of the state of the current international, national and the local economies. The economy is improving but the improvement is uneven, some people survived and recovered well from the effects of the "great recession," others did not and either remained unemployed, underemployed and have often experienced a substantial reduction in their wealth. The uncertainty appears to be due to a variety of factors, both economic and political. An example of uncertainty that is both economic and political in nature is the condition commonly known as the "Sequester." It replaced the "fiscal cliff" that dominated the airwaves in December and early January, causing continued uncertainty. The Sequester has begun in a seemingly quiet way, but with no immediate hope of resolving what is predicted to become a drag on the economy in the not too distant future. However, as time goes on the effects will become apparent and will have a real life impact in northern Ohio (e.g. Head Start Programs are being cut, Cleveland Airshow being cancelled, teachers positions will likely be cut, military contract employees furloughed or laid off, etc.). Another example of disquiet is on the international front in terms of strife in Syria, Turkey, Iran, and Iraq, with threats of instability to other countries such as Jordan predicted. And, the debt problems in European countries, even relatively small ones such as Greece, can undermine the U.S. and have an adverse effect on Ohio's economy, regardless of the best efforts of

Ohio's leaders to sustain economic growth and reduce unemployment.

At this time the economy in Ohio does continue to show signs of steady improvement from a very long and severe national recession, jobs are coming back in the auto industry and in new projects related to natural gas production. Yet as previously stated, Ohio's economy is susceptible to the financial health of the United States and the world. A third area of uncertainty is the advent of the Affordable Care Act and its implications for hiring full-time workers versus part-time workers. A fourth is the general gridlock in Washington D.C., beyond the Sequester issue, that fuels increasing concern over inaction on matters that may also slow the economy, such as addressing a growing national debt, keeping Medicare and Social Security solvent, reducing unemployment, and creating jobs that pay a living wage. One only has to view the limited opportunities available to recent high school and college graduates to find evidence that a "good" job with "good benefits" remains hard to find, unless you happen to be educated or trained in one of the few areas of high demand. There are positive signs, the housing market continues showing signs of recovery and the auto industry has had record sales this spring. Yet, uneasiness persists with some twelve (12) million people remaining unemployed, additional people underemployed, and faith in Congress to take serious steps to address what they can at historically low levels. And as previously stated, the recovery is uneven, depending upon location. The City of Norton, like many other municipalities faces challenges that have resulted in substantial cuts in state funding, elimination of the estate tax and declines in local tax revenue. Additionally, the City faces the prospect of costly, but necessary improvements to infrastructure in the areas of sewer and water.

The parties reached tentative agreement on all issues in April of this year, only to have the tentative agreement rejected by the Union's bargaining unit in May. Following this rejection, the parties under statute, brought their issues to fact finding. The parties at the hearing submitted their positions on two (2) issues: **Article 33 Wages and Article 36 Hours of Work/Overtime, Section 3**. All other issues have been resolved.

These items were specifically addressed by the fact finder in this report and are based upon

the evidence and arguments proffered by the Union and the City. The recommendations contained in this report are intended to conform to the statutory criteria that all fact finders must follow.

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.

The recommendations contained in this report are listed in accordance with Articles that were open and the subject of mediation. For the sake of brevity the specific rationale proffered by the parties is contained in their Position Statements. However, in summary, the parties' positions on the issues of wages and compensatory time are as follows:

Summary of Union's Position on Wages and Overtime (Compensatory)

The Union understands the City's financial condition, yet it strongly believes it should be treated in an equitable manner in relationship to other bargaining unit employees in the City. The notion of equity of sacrifice and or distribution of limited resources is a powerful factor, argues the Union. And, given the evidence, the Union is agreeable to the Employer's prior position (reached as a tentative agreement) on wages, but not its fact finding position to provide no wage increase. It argues that the wage increase included in the original tentative agreement would result in a minimal cost to the City and that the bargaining unit should be treated in a manner that mirrors the treatment of all employees in the City. The Union opposes the the City's position to eliminate compensatory time as hours worked for the purposes of computing overtime. It proposes the current language remain the same. The Union asserts that this proposed change is what led to the Union's rejection of the original tentative agreement in May. The Union's position on the issues can be found in its Position Statement.

Summary of City's Position on Wages and Overtime (Compensatory)

The City argues it has had ongoing financial challenges and that recently another financial concern has arisen regarding a ballot issue that has financial implications and requires the City to be more cautious about controlling its expenditures. This is in spite of the fact that in April the City had reached a tentative agreement with the Union to provide modest wage increases to the bargaining unit over the life of the Agreement. The Employer, while desiring to treat all City employees in an equitable fashion, argues the ballot issue that was recently certified has caused it to have to take a different stance with this bargaining unit.

On the issue of compensatory time being counted as time worked, the City, regardless of the fact that it has recognized that the current contract language counts compensatory time as time worked, indicated that it needs to take steps to reduce costs and to correct what it indicates is “duplication” or “pyramiding” in terms of overtime taken as compensatory time. The City’s position on the issues can be found in its Position Statement.

Fact-finder’s overall Findings:

Wages: There is no question that the City must be prudent in its financial decision making. Challenges largely born out of the “great recession” and subsequent declines in revenue from local and state sources dictate this course of action. Although I understand the City’s caution in granting wage increases in the wake of new developments, I find that the tentative agreement reached with the Union in April is still very modest in terms of amount and affordability, and it appears to be in line with what other bargaining units have received. Outside factors are always present in terms of political entities, and at this point in time what will occur in November is more a matter of speculation than fact. And, as in the case with the police bargaining unit, the City always has the option of asking for negotiations to be reopened if speculation becomes fact. Moreover, internal comparable increases (“Comparisons”) provided to other employees represent persuasive evidence in terms of making fact finding recommendations. **Overtime:** The City’s position on eliminating compensatory time as originally tentatively agreed to by the Union in April is persuasive. It addresses the elimination of double counting compensatory time (time originally earned as overtime to again be counted toward eligibility for more overtime). It is both reasonable and consistent with trends of other public employers to look for sensible

ways to trim costs. Compensatory time is a contractually agreed upon substitute for receiving overtime pay, which under the Fair Labor Standards Act 29 U.S.C. §207(a) provides pay at time and one-half for hours worked after forty in a week. The Agreement also allows other types of paid time to make an employee eligible for overtime, beyond what is required by the FSLA. When compensatory time is used to provide both paid time off to an employee in lieu of overtime pay and to make an employee eligible for additional overtime, it now has been given greater value than the payment of overtime in cash. In contrast, if an employee is paid overtime pay, it is earned once and counted only once, and here the City is proposing to give compensatory time equal value to being paid for overtime. This is not unreasonable and avoids the “pyramiding” of compensation time to be used more than once for the same hours worked. This is different than other forms of paid time (e.g. vacation, holidays, sick leave), which are not born out of prior overtime and are designed to maintain an employee’s normal work year (2,080 hours) and his annual compensation. It needs to be clear that the Agreement goes well beyond the requirements of FSLA in terms of providing overtime for hours of work after eight (8) and for counting paid time (as opposed to hours actually worked) over forty (40) in making an employee eligible for overtime. The City needs to find ways to increase efficiency and this is one that brings compensatory time in line with the payment of overtime. I understand the Union’s argument in not wanting to give up this double-valued benefit, but the welfare of the public in terms of the City’s operating costs takes precedence in terms of double counting compensatory time.

Based upon these positions, the evidence in the record, and applying the statutory criteria, the following recommendations are made in hopes that the parties will ratify a new

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The fact finder respectfully submits the above recommendations to the parties this ____ day of June 2013 in Portage County, Ohio.

Robert G. Stein, Fact finder