

STATE EMPLOYMENT RELATIONS BOARD

FACT FINDING AND RECOMMENDATIONS

CASE NO. 2014-MED-11-1627

AMERICAN FEDERATION OF STATE, :

COUNTY & MUNICIPAL WORKERS :

UNION, LOCAL 2007 :

UNION :

AND :

CITY OF BEDFORD :

EMPLOYER :

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REPORT & RECOMMENDATIONS OF THE FACT FINDER

SEPTEMBER 16, 2015

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I. Bernard Trombetta

Fact Finder

I. DATE, PLACE AND PARTIES TO THIS HEARING

This hearing took place on August 26, 2015 at the Bedford City Hall in Bedford, Ohio. The parties are: Local 2007, American Federation of State, County & Municipal Workers Union, hereinafter sometimes referred to as the "Union" , and the City of Bedford, sometimes hereinafter referred to herein as the "City" or the "Employer".

II. APPEARANCES

FOR THE UNION

Brittney Howard	Representative- AFSCME
John Lindow	Secretary-Treasurer
Dennis Favazzo	President
Rick Soltis	Mechanic
Nick Schaefer	Service Department

FOR THE CITY

Jon Dileno, Esq.	Representative
Michael Mallis	City Manager
Frank Gambosi	Finance Director
Shawn Francis	Supervisor
John Montello, Esq.	Law Director

### III. EXHIBITS

Prior to the hearing, the parties, as required, exchanged "Position Statements which contained exhibits, charts and arguments and a "history" of the proposals and counterproposals of the parties who appear to have exchanged all necessary information throughout their negotiations. The Fact Finder accepted all comparisons, outside contracts, charts and proposals attached to the position statements or used during the course of the hearing and did not, as is customarily done, separately enumerate and identify such exhibits.

### IV. INTRODUCTION

The City is an inner ring, older suburb located in southeastern Cuyahoga County. It abuts or is close to Bedford Heights, Oakwood, and Walton Hills in Cuyahoga County and Northfield in Summit County. Its population is approximately 13,000. The City comprises an area of about 5.5 square miles. Its median household income is around \$40,000. The housing units are primarily older, single-family houses, on relatively smallish lots on tree lined, pleasant streets. There are some multi-family homes and apartment units along with a number of churches and schools, both public and parochial. It has a mix of commercial, office and strip retail spaces and the longest commercial strip is likely the famed "Bedford Auto Mile", featuring many new and used car dealerships which provide many well-paying jobs. At one time, Bedford was the home of numerous industries most and many were served by rail, but over the past two decades, many major employers like Lear-Siegler, Taylor Chair, Marble Imperial Chair and Ben Venue Laboratories closed or moved away. The latter's closing, the most recent, was the result of an inspection and audit by the federal government (Federal Food & Drug Administration?) and a consent by the owner not to use the physical plant to manufacture drugs again. The closing resulted in a loss of 1,300 well-paying jobs.

A start-up company took Taylor's space, but has not created enough new jobs to offset those lost with the closing. Marble simply closed down and consolidated what remained of its chair division into its desk operations in North Carolina. Ben

Venue's closing was hardly mitigated by the retention of the 65 jobs in the research and development department.

A few years prior to its closing, Ben Venue was sold to a German company with the bulk of its manufacturing facilities in Europe. These same facilities easily picked up the slack caused by shuttering the Bedford plant. The capacity of its European operations makes the consent agreement understandable from the employer's standpoint, but does not help the City and the loss of income taxes. According to the City, even if another manufacturer could be found, it is doubtful that the Bedford plant could ever again be used for the manufacture of drugs because of the consent agreement. The idea of selling and reopening the plant by another is all the more remote since most of the machinery has either been sold or removed to Portugal where it is used in the manufacture of drugs, ostensibly for the European market. Fortunately, the research unit is located in a separate building on a separate parcel which permits its continued operation free from the terms of the rather "draconian" settlement agreement. The once highly skilled workforce is lost to the City- permanently.

The finance director stated that Ben Venue's closing resulted in a tax loss of \$1.8 million. The City's plight was worsened when the state eliminated the local tax sharing funds. This resulted in a loss of an additional \$1.5 million per year. The bulk of these losses were incurred prior to 2015.

The City cut expenses to live within its new budgetary constraints. Refuse collections were privatized and collection fees were charged to the residents. The jobs of police and fire dispatchers were eliminated when the City joined a regional dispatch service with three other municipalities. An estimated \$40,000 was saved in the first year, and additional annual savings of between \$40,000 and \$90,000 are expected in future years.

The City provides health insurance for its employees. The program was modified in 2015 to lessen the continued premium increases and some of the additional costs were passed along to the employees. The new plan went into effect on May 1<sup>st</sup>, but this unit is still covered under the terms of the old coverage. Under the new contract, this unit faces increases in deductibles along with other charges. All

other municipal employees are covered under the new terms. Some members of this unit joined the wellness program in order to lower their premiums when the new program kicks in under the new labor contract. The wellness program requires an up-front fee, so some members of this unit have already felt the bite of the new policy. The safety forces and non-union employees are already covered under the new health plan.

This bargaining unit consists of 46 members from various municipal departments, including the waste water, water, service, finance, cemetery, equipment operators, building maintenance, recreation and some departmental clerical employees. Other city clerical, secretarial and stenographic employees are not unionized. This unit has been unionized for over 25 years.

#### V. TENTATIVE AGREEMENTS

The parties repeatedly met to bargain over the terms of a new contract. They exchanged numerous proposals and counterproposals. Prior to the hearing many outstanding issues were resolved by either agreeing to language changes or withdrawing the demands. Resolution was gained through “tentative agreements”. The fact finder, however, is unsure of the legal ramifications of a “TA”, and suggested that the “TA’s” be included as part of these findings after hearing evidence on the issues. The parties agreed to the suggestion. The full language of such tentative agreements have been marked as “Exhibit A” and attached hereto as if fully rewritten and constitute the recommendations of the Fact Finder. In summary form, those “TA’s” are or affect:

Article I. Recognition- Add “Arborist” and “Carpenter” as Grade 16 jobs;

Article V. Check Off- deduction of union dues;

Article IX. Discipline- Eliminate reference to suspension and permit an employee to review his/ her personnel file;

Article XXI. Leaves of Absence: Section 2- Jury Duty/ Witness Leave- in general,, adding witness leave compensation to the article

Article XXIV. Call-In Pay. Modification of the number of minimum number of hours of pay for call-ins outside of regular shift hours.

Article XXV. Insurance- incorporating changes regarding the new medical plan

Article XXXII. Equipment Classifications- addition and removal of certain types of equipment operators and the reclassification of some other operators.

Article XXXIV. License Fees- changes to the reimbursement of employees for CDL licenses

Article XXXVIII. Duration- providing for a shortened contract duration with an expiration date of December 31, 2016.

Withdrawals- with the exception of the three open issues (Consolidation of Jobs- Article XV, Layoffs- Article XVIII and Wages- Article XXX- all other proposals were to be withdrawn by the respective proponent.

## VI. MEDIATION

As required, the outstanding issues (3) were mediated prior to commencing this hearing. Two of the issues were successfully mediated. Issue Nos. 1 and 2 are intertwined since the changes to Article XVIII (Layoff) would necessarily be reflected in Article XV (Consolidation or Elimination of Jobs).

Many of the changes in both Articles were language clarifications rather than substantive, but the principal area of disagreement was the City's attempt to carve out an exception to the layoff order in Article XVIII with regard to seasonal employees. The City kept refining its proposal to meet the Union's objections, and finally proffered that a seasonal employee is one employed between May 1<sup>st</sup> and August 31<sup>st</sup>. Nevertheless, the Union would still not agree to the carve-out sought by the City. The Union viewed the changes as opening the door to a weakening of the bargaining unit by employing seasonal, temporary and part-time employees, sometimes rotating between seasonal and temporary at the expense of hiring permanent, fulltime employees who are required to become union members The

Union was unwilling to risk tampering with the language of this section and risk losing members.

The impasse was broken when the City agreed to withdraw its proposal and accepted the Union's interpretation that a seasonal employee was one hired to work between May 1<sup>st</sup> and August 31<sup>st</sup> and were likely to be students employed in the recreation department as lifeguards or groundskeepers to mow the various lawns and trim landscaping. The City then withdrew the "carve-out" language and the parties agreed to and signed off on the modified language of Articles XV and XVIII. The changes agreed to by the parties are in appropriate contractual language, have been marked as Exhibits B and C respectively and are attached hereto as if fully rewritten and shall be adopted into the new labor agreement between the parties.

## VII. FACT FINDING

### a. Evidence & Exhibits

In order to make a fair and impartial recommendation on a contested or open issue, the Fact Finder is charged with considering all relevant and reliable information introduced by the parties their respective position statements or in direct testimony. Neither party called an expert witness. Neither side called any witness. Evidence was not presented through direct and cross examination. All "testimony" took the form of oral presentation by the respective representatives. Queries by one party were permitted to be answered by the other. The fact finder permitted the attendees to address the chair as well as the other side if the questions were deemed appropriate and not argumentative. All exhibits, charts and comparisons in the respective position statements were accepted into evidence without objection. Neither representative chose to direct or cross examine any of the persons entering an appearance herein.

### b. Factors Considered

In accordance with Rule 4117-9-5(j), also considered and took into consideration the following:

- a. The past collectively bargained agreements between the parties;
- b. Comparison of unresolved issues with other public employees doing comparable work;
- c. Consideration of factors peculiar to the area and classification;
- d. The interest and the welfare of the public;
- e. The ability of the employer to finance and administer the issues proposed;
- f. The effect of the adjustments on the normal standard of public service;
- g. Lawful authority of the employer;
- h. Stipulations between the parties;
- i. Any other factors not listed above which are normally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or private employment

c. Issue Submitted

The only issue presented for fact finding was that of a wage increase.

The position statements of the respective parties disclose either a misunderstanding or a reduction in the City's wage offer. The Union's position statement contained a wage hike of 2.5% for each year (2015 and 2016) of the agreement. The parties previously agreed to shortening the agreement to 22 months, but the Union's Position Statement stated that the City proposed a 1.5% increase in 2015 and a 2.5% increase in 2016 whereas the City's position statement reflected a prospective 1% increase for 2015 and a 2.5% increase for 2016. Thus, not only was the offer significantly less, but the effective date was some 7 months after the expiration of the expired contract. The Fact Finder must accept the City's last offer as that contained in its position statement- a 1% prospective increase.

In support of its position, the Union argued that it should receive the 2.5% increase in each of the 2-years of the agreement, since the present agreement expired on March 1<sup>st</sup>, the increase for these second year would not be for one year, but for a shortened 10 month period and that unlike the other units, they would not receive the benefit of a full one year period. Apparently, the Union calculated the amount of money which a 2.5% increase would cost the City in base wage expenses for a full 12 months and compared them against the costs of the same percentage spread over a 10 period of the shortened agreement and used those estimates to support its position as to the reasons it was entitled to the same percentage increase as the firemen and police. The Union, however, agreed to the shortened agreement and had it not, the 2.5% increase would be applicable for the full 12-month period. The Fact Finder, however, is not going to revisit the duration issue which has been resolved and which neither party asked to be reopened. The argument advanced because of the shortened agreement is not compelling, particularly in view of the fact, that there is little chance that the 2.5% would be rolled back in succeeding contract negotiations.

The City did not argue an inability to pay the increases sought by the Union, but submitted that its finances are stretched and no new income streams are or will be available on which to base pay raises for its employees. The jobs held by this unit are diverse and while many members of this unit provide necessary, perhaps even vital, municipal services, there are also clerks, receptionists, auditors, and receptionists whose job tasks are significantly different from the technicians who man the water plant or sewer plant or the equipment operator. The various jobs held by members of this unit, have been classified and the wage differential between the various classes has been in place for an untold number of years and contract. The fact finder will not recommend differing percentages of wage increases depending upon job duties. Those differences were built into the hourly wage structure years ago and shall so remain.

The low end of the hourly scale appears to be \$21.59 per hour, whereas the highest hourly rate is \$28.47 ( for the equipment foreman). The rates earned by most range between \$22 and \$27 per hour, and based on the standard number of work hours per year, the annual salaries would range between \$45,760 and

\$56,160- this scale is hardly insignificant. Benefits, such as retirement and medical are also provided and those costs are not reflected in the hourly rates aforesaid.

The wage and benefit packages together with the lengthy representation by AFSCME permits one to conclude that this unit has been fairly treated over the years. It is the lack of money, particularly new money, that has caused this impasse. Population wise, the City is not growing. Many residents are older and retired. The median household income is in the \$40,000 per year range. The income tax base is not growing since the population base is static and there appear few prospects of new development. Industrial growth is stagnant, as is the number of jobs which may also be on the decline though no evidence was introduced on that point. The expanded operations of the automobile dealerships along the auto mile have likely helped ease the City's budgetary woes.

The City's industrial base is also shrinking. The area from the City center off Broadway, all along Northfield Road to Solon Road, was once the home to numerous industries, some small and some large. While some of these operations left before the advent of the municipal income tax, but those remaining generated substantial tax revenue and their employees spent money along the Northfield and Broadway strips. Today many of these businesses have closed or moved and their jobs transferred or eliminated, but it was Ben Venue's closing that has caused the City its greatest and most recent angst. Slashing the local government fund by the State a few years ago only added to its woes.

The City countered the income loss by moving to control expenses. It eliminated its fire and police dispatchers and joined a regional system. It privatized its refuse collections and back-charged the residents a monthly service fee. Personnel cuts, the extent of which were not disclosed, were made to the police department (though the Union was quick to point out that this was only a temporary reduction and was rectified through retirement and rehire).

The longevity of the workforce and dates of hire were not disclosed. In all likelihood, the members of this unit have substantial seniority and are either at or close to the top step in the wage scale. The City did not threaten further service or employment reductions, but such is always a possibility in view of the sluggish

economy. The level of services now provided appears adequate for a City of its size and age. The City stated that it intended to keep the pool and recreation facilities (baseball fields) in operation.

Increasing the income tax rate or passing a bond issue was not discussed by either side, likely because neither would have a chance of receiving voter approval.

The Fact Finder reviewed the wage increases given municipal employees over the past few years. The Union pointed out that the Police and Firemen have received a wage increase of 2.5% for 2015 whereas this unit has been offered a 1% prospective increase of only 5 months. Additionally the police and fire wage increases for 2016 kick in on January 1<sup>st</sup>, whereas this unit's increase is not effective until March 1<sup>st</sup>. Spread over the 5 months remaining in the first year of the new contract, a 1% increase is less than the nominal amount since percentages are usually interpreted on the basis of a 12-month period. The members would receive a wage increase, but the percentage if applied to a full 12-month period would be less than the stated amount.

The Union further argued that since 2008 the police and fire units received increases totaling 16.25% in contrast to this unit's raises of 13.25%. Equal treatment of a workforce in regard to wage increases is laudable, but not an inviolable principle. Policemen and firemen are highly trained specialists. Their jobs expose them to danger, and they as well the members of this unit are covered by worker's compensation for on the job injury, such coverage does not take into consideration the level of exposure faced by firemen when entering a burning building or by police officers when facing an armed felon.

The Union also pointed out that non-unionized employees received an increase of between 2.5% and 3.5% for 2015 and referred to City Ordinance 151.03 which held that the City keeps hourly, non-union bargaining unit wage increases on a par with that of bargaining unit employees wage increases. As the Union pointed out, the ordinance is a one-way street, otherwise this unit, too, would have received similar increases. The City is free to adopt whatever policy it deems advisable in dealing with its non-union employees and the aforesaid ordinance is but a statement of intention.

In support of its prospective wage increase, the City argued that one of the reasons for the prospective increase offer that both the non-union employees and the police and fire units are now covered under the terms of the new health insurance policy whereas this unit was still covered under the old and more costly plan. The new policy went into effect on May 1<sup>st</sup>, but these parties signed the extension agreement which did not mention implementation of the new health insurance policy. Coverage under the terms of the policy in effect under the now expired contract was their contractual right for which they should not be punished by receiving a prospective lower increase. There is no evidence that the Union engaged in any stalling tactics simply to extend the term of the old contract. The members of this Union should not, therefore, be held accountable for the failure of the parties to agree on a new contract which would have incorporated the terms of the new medical coverage. The risks of keeping the old policy in effect were known by the City when it agreed to the contract extension which appears to have been drafted by its counsel. The facts also disclosed that some Union members have enrolled in the "Wellness" program offered under the new medical plan in anticipation of its adaptation into the new agreement. The "Wellness" plan enrollment is at the expense of the individual member.

The City stressed that it may soon face additional austerity measures in light of the Ben Venue closing; some jobs (9) have already been eliminated in anticipation of these losses and these wage rates compare quite favorably with other municipalities (Bay Village, Fairview Park). The Fact Finder recognizes the financial plight of the City which is not unlike the financial condition of many public employers in the State of Ohio, though, admittedly, not many cities have experienced the devastating job losses of a Ben Venue. The fact finder also recognizes the rather limited scope of the wage comparisons above noted and that the issue of a wage increase for this unit is not dependent upon the wages paid in Bedford Heights or Walton Hills.

The City has properly managed its finances, cut expenses and reduced payroll, albeit moderately. It did,, however, find the wherewithal to grant increases of 2.5% to both the fire and police units in 2015 and 2016. It gave similar increases to its non-union employees. While the future may require further belt-tightening,

the City's present financial condition permits the Fact Finder to recommend a reasonable wage increase for this unit.

From 2008 through 2010, the police unit lead the way in wage increases, receiving 3.25% annually, part of which was explained by a departmental layoff which was quickly countered with at least one retirement and the recall of at least one patrolman. The firemen equaled the increases received by the police in 2008 and 2009, but received no increase in 2010.

In 2011 this unit received a 3% raise as against a 1% raise for the police and a 2% increase for the firemen. Beginning in 2011, however, the juggling of wage increases became more apparent with this unit receiving a 3% increase in contrast to a 1% raise for the non-union personnel, 1% for the police and 2% for the firemen. This was followed by an increase of 1.25% for this unit in contrast to increases of between 1.5% to 2.5% for the other employees, including council. In 2013 the firemen and council lead the way with raises of 3.25% and 3% respectively, with others getting raises totaling 2%.

In 2014, only this unit received an increase (1%). Council got a 3% bump and while this Fact Finder considers Council pay as a stipend, rather than a wage, it does indicate a willingness by Council to take care of itself.

The offer of a prospective, rather than a retroactive increase is troubling in view of the 2.5% increase received by the non-union employees, firemen, and policemen and the 3% increase received by Council, and while the City has offered this unit a raise of 2.5% for 2016, it must be noted that this raise is not effective until March 1<sup>st</sup>, whereas the others receive their increase on January 1<sup>st</sup>, and while this is due to the anomalies of the duration period of the respective labor agreements, the raise is less than a true 2.5% increase. As previously indicated the Fact Finder will not revisit the duration issue which was settled between the parties and signed off on.

Lastly, the Fact Finder declines to recommend the suggestion of the City finance director to make any wage increase effective with the first pay period of the month. The old contract expired on March 1<sup>st</sup>. Any wage increase should be

effective with the expiration date of that contract. It is noted that all increases referred to herein appear to have become effective on the first day of a calendar month without regard to a particular pay period. Computers and skilled computer operators can resolve this dilemma.

#### VIII. RECCOMENDATION

The Fact Finder recommends a wage increase for this unit of 1.5% for the first year of the contract, effective March 1, 2015 and a wage increase of 2.5% for the second year of the contract, effective March 1, 2016.

/s/ I. Bernard Trombetta\_\_\_\_\_  
I. Bernard Trombetta, Fact Finder

September 16, 2015

SERVICE

A copy of the foregoing Fact Finder's Report and Recommendation was sent to the City c/o Jon Dileno, Esq., c/o Zashin & Rich, 950 Main Street, 4<sup>th</sup> Floor, Cleveland, Ohio 44113 (jmd@zrlaw.com) and to the Union c/o Brittney C. Howard, Staff Representative, AFSCME, Local 8, 1603 East 27<sup>th</sup> Street, Cleveland, OH 44114-4217 ([bhoward@afscme8.org](mailto:bhoward@afscme8.org)) by electronic email and to [Cherith.Alexander@serbstate.oh.us](mailto:Cherith.Alexander@serbstate.oh.us) by fax on this 16<sup>th</sup> day of September 2015.

/s/ I. Bernard Trombetta

I. Bernard Trombetta