

STATE OF OHIO  
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding : SERB Case Number: 2015-MED-09-0767  
Between the :  
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:   
**CLERK OF THE MUNICIPAL** :   
**COURT, TOLEDO, OHIO,** :   
:   
Employer : Date of Fact-Finding Hearing: April 4, 2016  
and the :   
:   
:   
**AMERICAN FEDERATION OF** :   
**STATE, COUNTY AND MUNICIPAL** :   
**EMPLOYEES, OHIO COUNCIL 8,** :   
**AFL-CIO, AND LOCAL UNION 3411,** : Howard D. Silver, Esquire  
: Fact Finder  
Union :

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Clerk of the Toledo, Ohio Municipal Court, Employer

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For: American Federation of State, County and Municipal  
Employees, Ohio Council 8, AFL-CIO and Local Union 3411,  
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## PROCEDURAL BACKGROUND

This matter came on for a fact-finding hearing at 10:00 a.m. on April 4, 2016 in a conference room at the Union's offices at 420 South Reynolds Road, Toledo, Ohio 43615. The hearing record is comprised of testimony, actual and projected financial data, and arguments. This evidence includes city of Toledo, Ohio budgetary and fiscal figures, and information as to wages in the region and statewide. Following the presentation of evidence and arguments the fact-finding hearing concluded at 11:30 a.m. on April 4, 2016.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Three days prior to the day of the fact-finding hearing each party delivered to the fact finder and the other party the party's position on the sole remaining unresolved issue.

This matter is properly before the fact finder for review, for the preparation of a fact-finding report, and to recommend to the parties language to be included in the parties' successor collective bargaining agreement.

## FINDINGS OF FACT

1. The parties to this fact-finding procedure, the Clerk of the Toledo, Ohio Municipal Court, hereinafter the Employer, and the American Federation of State, County and Municipal Employees, Ohio Council 8. AFL-CIO and Local Union 3411, hereinafter the Union, have engaged in bargaining a successor collective bargaining agreement for a bargaining unit comprised of Deputy Clerks of the Toledo, Ohio Municipal Court.

2. At the time of the fact-finding hearing the bargaining unit was comprised of sixty-nine and three-quarters (69.75) full-time equivalent (FTE) positions, each filled by a Deputy Clerk of Court.

3. The most recent collective bargaining agreement for the Deputy Clerks' bargaining unit expired on December 31, 2015.

#### UNOPENED ARTICLES

The parties did not open the following Articles for bargaining. The fact finder recommends that all of the unopened Articles enumerated below be included, unchanged, in the parties' successor Agreement.

Article 1 – Recognition

Article 2 – Management Rights

Article 3 – Union Representatives

Article 4 – Payroll Deductions

Article 5 – Seniority System

Article 7 – Vacation

Article 8 – Paid Holidays

Article 9 – Accumulation of Sick Days and Sick Pay Usage

Article 10 – Termination and Severance Pay, Bereavement Pay, Jury Duty  
and Injury Pay

Article 11 – Leaves of Absence

Article 12 – Employee Discipline

Article 13 – Grievance Procedure

Article 14 – Labor-Management Meetings

Article 15 – No Strike, Interruptions or Slowdowns; No Lockout

Article 16 – Layoffs and Recall

Article 17 – Transfers

Article 18 – Hospitalization - Prescriptive Drug - Vision Care – Dental Insurance

Article 19 – Miscellaneous Provisions

TENTATIVELY AGREED ARTICLES

The following Articles were tentatively agreed by the parties. The fact finder recommends that the tentatively agreed Articles enumerated below be included in the parties' successor Agreement.

Article 6 – Workday/Overtime

Article 21 – Duration Provisions

UNRESOLVED ARTICLE

The following Article remained unresolved between the parties:

Article 20 – Wages

DISCUSSION OF UNRESOLVED ARTICLE AND RECOMMENDED LANGUAGE

Article 20 – Wages

The Union proposes an annual across the board wage increase for bargaining unit members in each of the three years of the parties' successor Agreement - a 2% wage increase retroactive to the beginning of the first full pay period in January, 2016; a 2% wage increase effective the beginning of the first full pay period in January, 2017; and a 2% wage increase effective the beginning of the first full pay period in January, 2018. The Union argues that the Employer has within its budget sufficient funds to finance the wage increases proposed by the Union.

In support of the Union's claim as to the Employer's ability to fund the wage increases proposed by the Union, the Union directs the fact finder's attention to Union

Exhibit 5, a proposed 2016 budget for the Toledo Municipal Court Clerk's Office that proposes an increase to the appropriated amount for base salaries and wages from \$3,281,131 to \$3,371,003, an increase of \$89,872, an increase of 2.74%. Union Exhibit 5 also shows a budgeted FTE history for the Municipal Clerk's Office of 84.34 FTE positions in 2014; 83.50 FTE positions in 2015; and 84.75 FTE positions proposed for 2016.

The Union points to Union Exhibit 6 as the 2016 proposed operating budget for the Toledo Municipal Clerk's Office showing an increase in base salaries and wages; a decrease in the Clerk's Office's contributions in the form of PERS employee pension pick-ups, and an increase in medical insurance costs.

The Union points to Union Exhibit 7, the projected revenues within the Municipal Court Clerk's Office proposed for 2016, showing the office's revenues for 2015 at \$3,320,910, projecting revenues of \$3,526,719 in 2016, an increase of \$205,809, an increase of 6.2%.

The Union refers to other bargaining units that are parties to collective bargaining agreements with the city of Toledo, Ohio, noting that a different Union local, AFSCME, Ohio Council 8, Local 7 received annual wage increases of 3%, 3%, and 2% from July, 2014 through June 30, 2017. The Union points out that a Union local comprised of Deputy Clerks in Cuyahoga County, Ohio represented by the Communications Workers of America, Local 4340, received wage increases of 2%, 2%, and an increase to be determined later under a collective bargaining agreement in effect from January, 2015 through the end of December, 2017.

The Union points to the very high bond rating enjoyed by the city of Toledo, Ohio and argues that such a rating reflects a stable financial foundation and sufficient resources for the wage increases proposed by the Union.

The Employer proposes an annual wage increase of 1% effective the first day of the first full pay period in January, 2016; in January, 2017; and in January, 2018. The Employer's wage proposal is retroactive to January, 2016.

The Employer presented the testimony of four witnesses - the Toledo Municipal Clerk of Court, Vallie Bowman-English; Alex Huguelet, the Toledo Municipal Court's Executive Deputy Clerk; Peter Sarantou, the Director of Finance for the city of Toledo, Ohio; and Michael Neidzielski, Commissioner of the city of Toledo, Ohio's Department of Human Resources. The witnesses spoke of the challenges facing the Toledo Municipal Court Clerk's Office. The budget of the Municipal Court Clerk's Office is determined by the Toledo City Council. The budget of the Clerk of Court's Office is funded by the city of Toledo's General Fund, as apportioned by the City Council. The Toledo General Fund is dependent upon the city's income tax. The current income tax rate in the city of Toledo includes a permanent income tax rate of 1.5% and a temporary income tax rate of .75%, producing a total income tax rate of 2.25%. The temporary .75% income tax rate is subject to voter approval every three years, and the current .75% temporary income tax rate will expire unless renewed by a majority of the city's voters before the end of 2016.

The Employer notes that a renewal of the temporary income tax rate at 1.0% (rather than .75%) was placed before the voters on March 15, 2016 and was soundly defeated by a majority of Toledo voters. The city of Toledo has until the close of calendar year 2016 to secure a renewal of the temporary income tax rate or the temporary rate will

expire and take with it 33% of the city's income tax revenue, a catastrophic reduction in the resources available to the General Fund for the operation of the city. The negative impact upon the budget of the Municipal Clerk's Office in the event the temporary income tax rate is not renewed is difficult to overestimate. The effect would result in a substantial reduction of the resources available to the city and to the Municipal Clerk's Office.

The Employer's witnesses also spoke of the significant reductions in state support formerly provided to local communities, including the city of Toledo, and mentioned the loss of revenue from the estate tax. The testimony from the Employer's witnesses was to the effect that there is no money available to the city for street paving as the operation of the city has depended upon borrowing from capital improvement funds. The Employer argues that it does not possess the ability to pay the wage increases proposed by the Union. The Employer proposes a 1% annual wage increase for each of the three years of the parties' successor Agreement.

As to any disparity in the wage increases secured by other bargaining units employed by the city, the Employer contends that those increases are grounded in concessions as to pension pick-ups for which compensation was paid. Union Local 3411, the Union local at issue in this case, had been compensated under prior Agreements for a reduction in pension contributions by the Employer.

The Employer argues that a 1% annual wage increase for each of the three years of the parties' successor Agreement is the maximum the Employer is able to fund at this time.

The fact finder understands that the parties have reached almost total agreement as to their successor Agreement, with only wages remaining to be resolved between the parties. Even this singular remaining issue finds the parties separated by only 1% per year on wages, a slim difference but one that has kept the parties from reaching complete agreement about their successor Agreement.

The fact finder finds no fault in the logic or conclusions put forward by either party based upon the data presented. What cannot be known with any confidence at this time, however, is whether the renewal of the temporary income tax rate of .75% will be approved by a majority of city of Toledo voters before the end of 2016. That decision by the city of Toledo's electorate is crucial to the ability of the city to pay any form of wage increase over the next three years.

The fact finder recommends the wage proposal suggested by the Employer based on a realistic view of what is available for such wage increases when increased health costs are considered, increases in the 2016 proposed budget amounting to about 10%, and based upon uncertainty about the renewal of the city's temporary income tax rate of .75%. Neither party controls the increased costs for health care coverage but it remains a substantial burden on both parties and impinges on the Employer's ability to fund wage increases. Neither party can guarantee passage of the temporary income tax rate.

The fact finder recommends to the parties that a 1% annual wage increase be paid during the three years of the parties' successor Agreement, retroactive to the beginning of the first pay period in January, 2016, and occurring at the beginning of the first full pay period in January, 2017 and at the beginning of the first full pay period in January, 2018.

RECOMMENDED LANGUAGE: Article 20 – Wages

Section 1. Base Annual Wage Plan

(a) Effective the first full pay period in January, 2016; January, 2017; and January, 2018, bargaining unit members shall receive a wage increase of 1%.

Finally, the fact finder reminds the parties that any mistakes made by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver

Howard D. Silver, Esquire  
Fact Finder  
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Columbus, Ohio  
May 2, 2016

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Fact-Finding Between the Toledo Clerk of Courts, City of Toledo, Ohio, the Employer, and the American Federation of State, County and Municipal Employees, Ohio Council 8, AFL-CIO and Local Union 3411, the Union, SERB case number 2015-MED-09-0767, was filed electronically with the Ohio State Employment Relations Board at [MED@serb.state.oh.us](mailto:MED@serb.state.oh.us) and served electronically upon the following this 2<sup>nd</sup> day of May, 2016:

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Howard D. Silver, Esquire  
Fact Finder

Columbus, Ohio  
May 2, 2016