

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FEBRUARY 24, 2016**

In the Matter of:

AFSCME Ohio Council 8, Local 1822

and

City of Pickerington, Ohio

) Case No: 2015 MED-09-0922

) Carol J. Bader, Esq.
) Factfinder

APPEARANCES:

For the Employer:

**Mr. John Krock
Clemans, Nelson & Associates, Inc.
485 Metro Place South, Suite 200
Dublin, Ohio, 43017**

For the Union:

**Mr. Stephen Roberts
AFSCME, Ohio Council 8, Local 1822
6800 North High Street
Columbus, Ohio, 43085**

INTRODUCTION

The undersigned was duly appointed by SERB letter dated January 21, 2016 to serve as Fact-Finder in the matter of AFSCME Ohio Council 8, Local 1822 (hereafter referred to as "Union") and the City of Pickerington (hereinafter referred to as "Employer" or "City") pursuant to OAC 4117-9-5 (D). The hearing was held at the office of the Employer in Pickerington, Ohio on February 10, 2016. The Union was represented by Mr. Stephen Roberts, Staff Representative, and the Employer was represented by Mr. John Krock, Clemans, Nelson, & Associates. There are two units under one contract, Unit 3838 consists of the Dispatch Operators for Pickerington and that unit settled their portion of the contract including wages and benefits in January. The second Unit, 1822 rejected the City's offer and chose to go forward with fact-finding. Based on the Pickerington City Council's regular meeting date, the Fact-finding report is to be released on February 24, 2016.

All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the party's final agreement. The agreed upon sections are listed in Appendix A.

FACTUAL BACKGROUND

The City of Pickerington, Ohio is located in central Ohio near Columbus. Pickerington

has a population of approximately 18,000. The Union members are full time service and maintenance employees of the City including Utility Treatment Operators 1,2,and 3;Plant Operators 1, 2 and 3; Service Workers 1 and 2; Mechanic/Equipment Technicians 1 and 2; Utilities Maintenance Technicians 1 and 2; Landscaper; Arborist; and Utility Laborers. In total, there are seventeen (17) employees in the bargaining unit. At the February 10, 2016 fact-finding there were two unresolved Articles, with several sub issues within those Articles.

UNRESOLVED ISSUES

Based upon considerations enumerated in Ohio Revised Code 4117.14 including past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the employer to finance and administer the issues proposed, the effect of adjustments on the normal standard of public service, the lawful authority of the Employer, other factors traditionally considered in the determination of issues submitted, the Fact-Finder makes the following recommendations:

Open Articles:

Article 17. Wages - including three, yearly wage increases, Plant Operators pay range placement, the maximum accrued comp time, and 1%increase for Pay range 12.

Article 18. Insurance- percentage of employee contribution towards the health insurance premium and funding level for HSA accounts.

Article 17. Wages

A. Wage Increases

Union Position:

The Union is proposing a 3.5% increase for each year of the contract. The Union argued that the City is in a healthy financial position and can afford to provide the raises to their employees. Each subsequent year increase to occur on December 21. They also propose a 1% increase for Pay Range 12 as of December 21, 2015. (U-Tab-2)

The Union presented evidence from other city and county sources that employees with Operators licenses are paid an additional hourly incentive for holding the licensure ranging from .08 to .90 per hour. (U-Tab 2, Tab 7) The raises in the Union's comparable cities were from 2% to 3%. (U- Tabs 3-8)

City Position:

The City's proposal is to increase wages 1% each year of the contract. The first year to occur upon signing. Their position is that the Union members are already "highly compensated", therefore a one percent increase is adequate. Their argument was supported by

other large and small cities wages. (E- Tab 7) They also submitted two SERB reports which reflect the wage statistics for the state. (E-Tab 9) SERB reports that raises around the state were steadily increasing since the lows of the recession of 2008. The average wages are closing in on a 2% annual increase. (E-Tab-9) The City made no argument based on inability to pay.

Analysis:

The Factfinder reviewed the evidence, arguments and information presented by the parties. She recognizes the preparation that goes into a fact-finding hearing and appreciates the parties' hard work. However, as the hearing progressed, it was obvious that the parties could have agreed to a 2% increase for each year of the contract. The City originally offered 2% across the Board but reduced the offer to 1% after Local 1822 rejected the first contract. The Union representative stated that his membership did not reject the original offer based on the wages but on other issues.

Each party offered several local cities as comparables to support their position; the union at 3.5% each year and the City at 1% each year. The problem with the parties' comparables is that they generally ignore the better evidence - that of the dispatchers agreement. Here we have other employees under the same contract at 2% each year. The Union stated that throughout the bargaining history of the contract, the wage increases have always been the same for both units. (Roberts) The City's Exhibit at Tab 8 indicates that all City employees received the same wage increases over the last three years. As a practical matter, providing less to the service employees or providing more would cause a problem in the workplace. Where wages and benefits are concerned, nothing could cause more discord and disruption than a settlement of different amounts between the two units. According to the City representative, Council is now aware and concerned that these employees are already "highly compensated" and should not receive a 2% increase. Since the 2% offer was made without that analysis, the offer should stand. The Factfinder sees no reason to provide other than the original 2% each year to the bargaining unit. If there is a desire to have separate wages and benefits for the units, then a separate contract should be negotiated.

The question then becomes the appropriate date for the first year raise to become effective. Again, under these circumstances, there is no reason to make the effective date different from that of the dispatchers. According to U-Tab 1, "City of Pickerington Dispatchers - Ratified January 26, 2016." the effective date for the 2% raise is December 21, 2016.¹ The City states it should be upon signing and January 1 each year after. Using different dates for receipt

¹ The date on the wage chart did not seem to be correct as it contradicted the narrative which was 2015.

of the annual raise also disrupts the parity between the units.

The Factfinder believes that the December 21, 2016,² in the U-Tab-A is in error, so the following recommended language is for a December 21, 2015 date. The Factfinder's intent is to have the increase be effective the same date as the dispatchers received their increase, and the units receive raises on the same date each year after. (U-Tab-1)

The final issue is the 1% increase for Pay range 12. There was not any basis presented for increasing Pay range 12 by 1%. Without more information, the Factfinder is reluctant to increase one pay range by an additional 1%. The City's proposal of no increase for pay range 12 is recommended.

B. Plant Operators Pay Range

The current situation with the Utilities Plant Operator wage placement needs to be rectified. A Utilities Plant Operator 1 is currently paid at pay range 10. Utilities Plant Operators 2 and 3 are both paid at a pay range 12. It is unknown how this happened, but there are obvious problems paying different level employees at the same rate. At the time of the hearing, there were no Plant Operators 2 so none are in pay range 12. There are six Utilities Plant Operators, there are three (3) Plant Operator 1s at pay range 10 and three (3) Plant Operator 3s at pay range 12. There are no Plant Operator Twos in pay range 12. (Krock) Both parties were in agreement that the problem needed to be solved.

Union's Position:

The Union's solution to the Plant Operator 2 issue is the following. They would move the Plant Operator 1 to pay range level 11, Plant Operator 2 would be at pay range 12 and Plant Operator 3 would be placed in a newly created Pay Range 13. This would, in their opinion, correct the problem and no one would be harmed. (U-Tab-A)

City's Position:

The City's solution to the pay range problem is to maintain the Plant Operator 1 at Pay Range level 10. Plant Operator 2 would be moved down to an 11 and Plant Operator 3 to be paid at a pay range 12. In their view, this solves the problem and no one will be harmed by this proposal as there is currently no Plant Operator 2. The City is willing to allow any person in pay range 12 to remain there. According to the City, their proposal only affects those in pay range 10 working towards promotion and new hires. They also raised a concern that the Union proposal would benefit some of the parties at the table and the City did not want to make any special deals with those employees who had bargained the contract. (E-Tab-8)

Analysis:

² This date above the wage chart contradicts the narrative that accompanies the proposal.

The Factfinder sees this as one of the issues preventing an agreement, but the problem must be solved. The Factfinder has concern for the Plant Operators 1s. Those employees in pay range 10, would consider the reduction of the Plant Operator 2 pay as a loss. The City does not want to create a new pay range to resolve this as they argue the employees are already "highly compensated". On the other hand, the City stated several times during the hearing that they did not intend to harm any employee with the reduction in pay range for the Plant Operator 2. The Fact finder agrees with the City, that a new pay range 13 should not be created. This is based on the fact that the union members are well compensated if not highly compensated. However, the employees in the Plant Operator 1 position have had an expectation that they would receive a pay range 12 if they were promoted to Plant Operator 2. A reduction in the pay range at the next level changes their incentive to work towards the advanced licensure and promotion. While "grandfathering" those 3 individuals may take a longer time to move the Plant Operator 2s to pay range 11, this gives them the opportunity to reach that higher pay amount. This special treatment should only be in place for the life of this agreement. In other words, the three pay range 10 individuals still have the opportunity to be promoted into pay range 12 for the next three years. Any outside hires at Plant Operator 2 are to be paid at pay range 11. The Parties have the ability to bargain a continuance of this or end the option in three years.

The Factfinder does not believe that individual names should be in the contract, perhaps a side agreement would be the best place to include those specifics. In any case, each of the current Plant Operator 1s human resources records should clearly reflect this special status through the end of the contract in 2018.

Recommended Language:

Section 17.1 *Effective December 21, 2015, permanent bargaining unit employees covered by this Agreement shall be paid in accordance with the following wage ranges and rates:*

<u>CLASSIFICATION</u>	<u>PAY RANGE</u>
Service Technician 1	9
Arborist	9
Service Technician 2	10
Utilities Treatment Plant Operator 1	10 *
Utilities Treatment Plant Operator 2	11
Utilities Treatment Plant Operator 3	12
Public Safety Dispatcher 1	D1
Public Safety Dispatcher 2	D2
Public Safety Dispatcher 3	D3

** The three individuals who are in Utilities Treatment Plant Operator 1 classification as of the ratification date of this contract will be "grandfathered" at a pay range 12. Should those individuals obtain the proper licensure and be promoted to Plant Operator 2 during the life of*

this contract they will be paid at pay range 12. Any current employee in pay range 12 will be grandfathered at that level. All new hires for Plant Operator 2 will be paid at pay range 11 after the signing of this contract.

Effective on December 21, 2015 (2%);

Pay Range	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Nine (9)	17.99	18.73	19.48	20.25	21.05	21.91	NA
Ten(10)	18.73	19.48	20.25	21.05	21.91	22.76	NA
Eleven (11)	19.48	20.25	21.05	21.91	22.76	23.70	24.63
Twelve (12)	20.25	21.05	21.91	22.76	23.70	24.63	25.63

December 21, 2016 (2%)

Pay Range	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Nine (9)	18.35	19.10	19.87	20.66	21.47	22.35	NA
Ten(10)	19.10	19.87	20.66	21.47	22.35	23.22	NA
Eleven (11)	19.87	20.66	21.47	22.35	23.22	24.17	25.12
Twelve (12)	20.66	21.47	22.35	23.22	24.17	25.12	26.14

December-21-2017 (2%).

Pay Range	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Nine (9)	18.72	19.48	20.27	21.07	21.90	22.80	NA
Ten(10)	19.48	20.27	21.07	21.90	22.80	23.68	NA
Eleven (11)	20.27	21.07	21.90	22.80	23.68	24.65	25.62
Twelve (12)	21.07	21.90	22.80	23.68	24.65	25.62	26.66

(Please note: The Factfinder calculated these numbers but defers to the City of Pickerington Finance Department for final pay charts. To be clear this note is not to be included in the contract language)

C. Comp time

City Position:

The City argued that the current language allowed unlimited comp time in that it was a "rolling" maximum. (Krock) Under current language, an employee can maintain a 40 hour maximum, as soon as they use it, then they can earn more and use it, without end. Thus, there

is no cap on the comp time and according to the City they would rather pay the employees for overtime.

Union Position:

The Union proposes that the Local 1822 members maintain their current ability to carry a 40 hour maximum at any one time. As an employee uses comp time, they are then able to accrue more to the maximum. They contend that a reduction in the comp time, as accepted by the dispatchers would not allow for "rest" after working long hours plowing snow. In addition, comp time had not been granted in the last few years with a change in management personnel. (U-Tab-A)

Analysis:

This issue appears to be the other barrier to an agreement. The City wants to reduce time off and prefers to pay the overtime.³ The Union argues that comp time is an issue for their members who are called out to salt and plow the roads. When this occurs the comp time may be used to rest after working many long hours. The dispatchers recently approved a reduction in their comp time accrual. The Factfinder has no information on the dispatchers' overtime situation. In order to review the positions of the parties, the Factfinder looked to the law. The Fair Labor Standards Act sets certain standards for accrual of and usage of comp time:

"Compensatory Time: Under certain prescribed conditions, employees of State or local government service may receive compensatory time off, at a rate of not less than one and one half hours for each overtime hour worked, instead of cash overtime pay. Law Enforcement, fire protection and emergency response personnel engaged in seasonal activities may accrue up to 480 hours of comp time; all other state and local government employees may accrue up to 240 hours. An employee must be permitted to use compensatory time on the date requested unless doing so would "unduly disrupt" the operations of the agency.⁴

Under the FLSA, comp time may be accrued up to 240 for non-seasonal/safety employees and 480 for safety forces/ seasonal workers. Even if snow plowing is not considered "seasonal" work,⁵ a forty hour rolling maximum is not unreasonable for these employees. The City administration may still control the usage so that comp time may be denied if its use "unduly disrupts" the operations of the City.

Different language for the Local 1822 members is appropriate in this instance because

³ In contrast, many cities use comp time in hard times to reduce their cash out flow, because the over time for snow plowing and salting of roads cannot be avoided.

⁴ U.S. Department of Labor, "Fact Sheet #7 Public Employees; *See Generally*- Fair Labor Standards Act, Title 29, Subtitle B, Chap. V, Subchapter A, part 553- "Application of the Fair Labor Standards Act to Employees of State and Local Governments", sections .21 to .28.

⁵ The fact finder does not have enough information to make a determination as to whether the Pickerington AFSCME employees assigned to plow snow qualify for the 240 hour maximum or the 480 hour maximum.

of the special circumstances of their seasonal work.

Recommendation:

Section 17.11 Insert to replace first sentence of paragraph three.

The maximum amount of compensatory time an employee of Local 1822 may have as an accrual balance at any one time is forty (40) hours.

Article 18 Insurance

Introduction: There are two parts to the insurance question. First, the percentage of premium the employees are required to pay, currently at 13%. The second, is the funding of the HSA accounts for each employee. They are now funded at 75% of the deductible each year. The Dispatchers of Local 3838 settled at 13% for each year of the contract. They also settled for 75% funding, or that of the non bargaining Pickerington employees, whichever is greater.

A. Insurance Premium:

City Position:

The City proposes that the Union members pay 13%, 14% and 15% over the three years of the contract. They offer outside comparable cities to support their offer, which showed the 13% to be in the middle of the other cities cited. The top city, Circleville is at 20%, the lowest rates are for London and Zanesville each at 10%. (E-Tab-11)

Union Position:

The Union proposes that the premium percentage remain at 13%. They cite the dispatchers' agreement, which was ratified at a contribution of 13% for each year. (U-Tab-9)

Analysis:

The City exhibit showed that they are in the middle of other similar cities. The Union cited the dispatchers' agreement. As was the case with wages, there is no reason to separate the units on this issue. The appropriate rate should be 13% for the life of the contract.

Recommended language is below.

B. Funding the HSA

The dispute is over what guarantee the employer offers to fund the employee Health Savings Account or HSA. Current language provides for a 75% funding of the deductible.

City Position:

The Employer's offer is not less than the funding for non-bargaining City employees. This offer removes the 75% guarantee that the union employees had previously. The City stated several times at the hearing that they have no plans at this time to reduce the funding below 75%. (E-Tab-10)

Union position:

The Union position is that the members of Local 1822 be treated the same as the as the dispatchers unit. Their proposal is the same language ratified by the dispatchers. This includes funding of the HSA at 75% of the deductible or the same as the City's non bargaining unit employees, whichever is greater. (U-Tab-9)

Analysis:

This is another issue where parity should be maintained. As with wages and other benefits, there is no reason to separate the units on this issue.

Recommended Language:

Section 18.1 *The Employer will provide the same hospitalization, surgical, major-medical, prescription drug, vision, and/or dental coverage that is provided to non-union, non-administrative City employees. If the city discontinues health care for non-bargaining employees, the City agrees to provide Health Care Insurance for bargaining unit employees. Bargaining unit employees will pay the same contributions toward the monthly premiums as the non-union, non-administrative City employees' pay. The employee shall pay monthly contributions equal to the percentages noted below of the total cost of such coverage, rounded up to the nearest dollars.*

2016	2017	2018
13%	13%	13%

The City also agrees to fund the Health Savings Account (HSA) at not less than 75% of the deductible or the same funding as non-union employees, whichever is greater.

Please note: this continues with agreed upon shaded language.

Respectfully submitted,

Factfinder, this 24th day of February 2016.

**APPENDIX A: TENTATIVE AGREEMENTS FOR
AFSCME OHIO COUNCIL 8, UNIT 1822 AND THE CITY OF PICKERINGTON**

Article 1	Contract
Article 2	Recognition
Article 3	Union Rights and Representation
Article 4	Union Security
Article 5	Gender/Non Discrimination
Article 6	Grievance Procedure
Article 7	Arbitration
Article 8	Internal Review Procedure
Article 9	Management Rights
Article 10	Probationary Periods
Article 11	Discipline and Records
Article 12	Labor /Management Meetings
Article 13	Lay Off and Recall /Job Abolishment
Article 14	Seniority
Article 15	Work Rules
Article 16	Vacancies and Postings
Article 19	Working Out of Class
Article 20	Uniforms and Equipment
Article 21	Tuition reimbursement
Article 22	Vacation
Article 23	Holiday/Personal Days
Article 24	Sick Leave
Article 25	Bereavement Leave
Article 26	Injury Leave
Article 27	Military Leave/Jury Duty
Article 28	Family and Medical Leave
Article 29	No strike/No Lockout
Article 30	Waiver in Case Emergency
Article 31	Entire Agreement
Article 32	Duration/Amendment
Article 33	Miscellaneous