

IN THE MATTER OF FACT-FINDING
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD
SERB CASE No: 2015-MED-10-1163

AFSCME, Ohio Counsel 8, Local 101, AFL-CIO
Union

and

City of Xenia

Employer

Fact-Finder's Recommendations

Betty R. Widgeon

PRESENTED TO:

Donald Collins, General Counsel,
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State Employment Relations Board
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And

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And

P. Scott Thomasson, Staff Representative
AFSCME Ohio Council 8
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INTRODUCTION

This Fact-Finding arises pursuant to the Ohio Revised Code Section 41117.14 between AFSCME, Ohio Counsel 8, Local 101, AFL-CIO and the City of Xenia, Ohio (“Xenia.”) Xenia

is a city in Greene County, Ohio, United States. The municipality is located in southwestern Ohio 21 miles (34 km) from Dayton. As of the 2010 census, the city had a population of 25,719. Xenia is the third largest city by population in Greene County, behind Fairborn and Beavercreek, Ohio. It serves as the county seat of Greene County, being at the geographical center, and housing the County Courthouse, the County Sheriff's Department, Jail, and other Government departments. Jackie N. Potter, Director of Human Resources, is the City's principal representative and chief spokesman for the negotiations. Steven J. McCreedy is the City's designated legal representative for fact finding. P. Scott Thomasson is the AFSCME representative.

Bargaining Unit

The AFSCME, Ohio Counsel 8, Local 101, AFL-CIO has represented the bargaining unit since 2005. The bargaining unit consists of all full-time employees working in the Public Service Department including Laborer; Mechanic Helper; Treatment Plant Attendant; Park Maintenance Worker; Refuse Truck Operator; Parking Meter Service Worker; Treatment Plant Laboratory Technician; Equipment Operator; Electrician; One-Man Pack Driver; Maintenance Foreman; Maintenance Crew Leader; Wastewater Treatment Plant Operator; Treatment Plant Mechanic; Equipment Mechanic; and Wastewater Treatment Plant Semi-Tractor Trailer Driver. Temporary, part-time and seasonal employees are not included in the bargaining unit. At the time of the hearing, the bargaining unit consisted of approximately thirty-eight full-time regular positions. The undersigned Fact Finder was appointed to hear and make recommendations in the referenced matter.

Background

The Fact-Finder initiated a pre-hearing telephone conference with the parties' representatives on Wednesday, May 11, 2016, and she received prehearing statements from each party by electronic transmission on or about May 18, 2016. The hearing was scheduled for May 20, 2016 at the City of Xenia offices located at 101 N. Detroit Street, Xenia, Ohio 45385. In compliance with the Ohio Public Employee Bargaining Statute Rule 4117-9-05, the Fact Finder discussed with the representatives whether any further attempt at mediation would assist the parties. The representatives agreed to attempt further mediation before starting with the fact-finding hearing. The Fact Finder held a mediation session with the parties on May 20, 2016. The parties were unable to resolve their differences during the mediation session, and the fact-finding hearing began at 10:00 am on June 1, 2016 at the City of Xenia offices.

At the hearing, the parties were represented by skilled counsel who summarized their positions and presented supporting testimony and exhibits. The parties made agreements on an impressive number of issues before coming to fact finding. Those agreements involve the following matters:

- 1) Preamble
- 2) Conflict of Contract and Law
- 3) Union Recognition
- 4) Union Dues
- 5) Union Business
- 6) Management Rights and Responsibilities
- 7) Non-Discrimination
- 8) Longevity/Bonus
- 9) Vacancies
- 10) Layoff and Recall
- 11) Retirement
- 12) Plus-Rating
- 13) Group Insurance Benefits
- 14) Vacation

- 15) Holidays
- 16) Paid Absence Days
- 17) Injury Leave
- 18) Legal Process Absence
- 19) Hours of Employment
- 20) Overtime Pay
- 21) Emergency Meal Allowance
- 22) Travel, Conference, and Training Expenses
- 23) Grievance Procedures
- 24) Labor Management
- 25) No Strike or Lockout
- 26) Safety and Health
- 27) Entire Contract Clause, Waiver of Bargaining
- 28) Commercial Drivers Licenses
- 29) Tuition Reimbursement
- 30) Family and Medical Leave Act
- 31) Attendance (New Article)
- 32) Meals
- 33) Tuition Reimbursement
- 34) Sick Leave
- 35) Holidays
- 36) Paid Absence Days
- 37) Injury Leave
- 38) Overtime
- 39) Uniforms
- 40) Vacation
- 41) Plus Rating

The Fact-Finder **expressly incorporates by reference all agreements, tentative and otherwise, previously entered into between the parties.**

Issues Outstanding

- (1) Article 14 SICK LEAVE

The City proposes changes in Sections 14.2 and 14.5. In Section 14.2, the City is requesting the addition of language providing for a transitional work program and maternity and paternity leave. In Section 14.5, the City has proposed striking language in order to more fully

align this section with the provisions of FMLA. The Union sees no reason for making the proposed change.

(2) Article 7 WAGES

The City proposes a wage increase of 2% per annum for each year of the Contract for all members of the bargaining unit. The Union proposes 2.50% effective January 31, 2016; 2.25% effective, January 31, 2017; and 2.00% effective January 31, 2018.

(3) Article 24 UNIFORMS

The City proposes increasing the annual uniform stipend for bargaining unit employees from \$525 to \$600. The Union proposes increasing the uniform stipend to \$675.00.

(4) Article 33 STANDBY PROCEDURES AND READINESS

The City proposes maintaining current contract language. The Union proposes increasing the compensation for carrying the communication device and responding from 8 hours to 10 hours at regular pay.

(5) Article 32 DURATION

With respect to Article 32, the parties are agreed to a three-year contract to be effective as of the date of ratification, and continuing for a period of three years from that date. The City is opposed to retroactivity with respect to any wage increase, whereas the Union is in favor of retroactivity. The Union is in favor of retroactivity with respect to any wage increase.

At the conclusion of the parties' presentations, it was agreed that the Fact-Finder would issue her report on July 11, 2016. This report is submitted on July 11, 2016 at the time and in the manner (via email attachment) stipulated to by the parties.

CRITERIA FOR THE FACT-FINDER

As required by Rule 4117-9-05, the Fact-Finder considered the criteria set forth below in making her recommendations.

1. Past collectively bargained agreements, if any.
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification 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 of the adjustments on the normal standards of public service.
4. The lawful authority of the public employer.
5. Any stipulation of the parties.
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

FACT FINDER'S RECOMMENDATIONS

The Fact Finder has extensively reviewed and carefully considered the parties' positions, evidence, and supporting arguments on each of the outstanding issues. Having done so, she makes the following recommendations regarding each:

(1) Article 14 SICK LEAVE

The Fact Finder finds the City's position regarding changes to the sick leave policy reasonable and mutually beneficial to the parties. Additionally, the Union presented no persuasive arguments against this change or showing that the change would cause a detriment to the bargaining unit. For these reasons, the Factfinder **recommends that the sick-leave changes proposed by the City be adopted by the parties.**

(2) Article 7 WAGES

The Fact Finder finds that evidence respecting both the City's present financial position and the relevant comparables submitted by the parties sufficiently supports a conclusion that the City has the ability to fund a modest wage increase. Therefore, she recommends a **2.25% wage**

increase effective January 31, 2016; a 2.25% increase, effective January 31, 2017; and 2.00% increase, effective January 31, 2018.

(3) Article 24 UNIFORMS

The Fact Finder notes that both parties recognize that an increase in the uniform allowance is fitting. The Fact Finder recommend that the uniform allowance be increased from **\$525 to \$600** for bargaining unit employees.

(4) Article 33 STANDBY PROCEDURES AND READINESS

Evidence documented that there has been no increase in this compensation for over a decade. The Factfinder finds that the Union's argument and position advocating an increase in the compensation for carrying the communication device and responding holds merit. The mere fact that employees are willing to perform this duty does not negate the impact or the weight of this responsibility. The Factfinder recommends that the compensation be **increased from 8 hours to 9 hours.**

(5) Article 32 DURATION

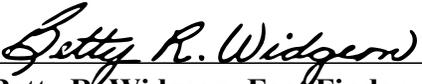
The Fact Finder carefully considered the facts and conclusions underlying the City's opposition to retroactivity of any wage increase. The evidence in the record does not support the City's stated justification. Specifically, the Fact Finder finds no verification in the record of the Union deliberately dragging its feet during the parties' negotiations or their attempts to reach agreement on the contract terms. Therefore, the **Fact Finder recommends retroactivity** with respect to any wage increase.

Respectively submitted,


Betty R. Widgeon, Fact Finder

Certificate of Service

I, Betty R. Widgeon hereby certify that a true copy of the foregoing Fact Finder's Report was served by electronic mail via email attachment on Monday, July 11, 2016 upon Steven J. McCready, Esq., One South Limestone Street, Suite 800, P.O. Box 1488, Springfield, OH 45501 smcready@martinbrowne.com representative for the employer and P. Scott Thomasson, Staff Representative, AFSCME Ohio Council 8, 15 Gates Street, Dayton, Ohio 45402, sthomasson@afscme8.org and upon the Ohio State Employment Relations Board (via **Donald Collins**, General Counsel, Bureau of Mediation—State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213) also via electronic attachment, this 11th day of July 2016.



Betty R. Widgeon, Fact Finder

July 11, 2016

July 11, 2016