

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACTFINDING BETWEEN: Case Nos. 2015-MED-12-1305  
2015-MED-12-1306

City of Cleveland,  
Employer

Date of Hearing: December 11, 2017  
Date of Report: December 15, 2017

And

International Brotherhood of Electrical Workers,  
AFL-CIO, Local 39,  
Employee Organization

Meeta A. Bass, Fact Finder

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**FACT FINDER'S REPORT AND RECOMMENDATIONS**

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Appearances:

For City of Cleveland:

George S. Crisci, Esq.  
Zashin & Rich  
Ernst & Young Tower, 4th Floor  
950 Main Street  
Cleveland, Ohio 44113

Also Present  
Natasha Brandt  
Catherine Troy  
Bernie Jackson  
Rich Barton  
Nycole D. West  
Frances Paster  
Austin Opalich

For International Brotherhood of Electrical Workers,  
AFL-CIO, Local 39,

Susannah Muskovitz, Esq.  
Brooks Boron, Esq.  
Muskovitz & Lemmerbrock, LLC  
The BF Keith Building  
1621 Euclid Avenue, Suite 1750  
Cleveland, Ohio 44115

Also present:

Brian Dean  
Brian Miller  
Andre Dunnican  
Robert Kinstler

## INTRODUCTION Case Background

This case is a fact-finding proceeding between the City of Cleveland, hereinafter referred to as Employer, and the International Brotherhood of Electrical Workers, AFL-CIO Local 39, hereinafter referred to as Union. The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement, a three (3) year agreement, between the parties expired March 31, 2016.

## BARGAINING HISTORY

The Notices to Negotiate were filed with SERB on December 23, 2015, and the parties began to meet across the table on April 17, 2017, to exchange proposals. The Union's initial set of proposals addressed a number of economic and non-economic issues but did not contain a wage proposal. The City's initial proposal included a wage freeze for 2016 and 2017 and a 1% increase for 2018. The Union addressed the wage rates for linemen and line foremen at CEI, and the retention and recruiting of journeymen.

The second negotiation session was held on May 8, 2017. Again, there was a discussion about wage rates for linemen and line foremen at CEI and other competitors, as well as the wage rates for the skilled trades who worked for the City of Cleveland. The parties were successful in resolving certain issues and reached a number of tentative agreements during that negotiation session as set forth below, and those agreements are incorporated herein.

Article 14, Leave of Absence Section B-Union Leave,  
Article 18, Hours of Work D,  
Article 19, Inclement weather, Section A,  
Article 20, Emergency Conditions During Inclement Weather, Section A, B and C,  
Article 22, Tools,  
Article 23, Staffing E. Splicer Crew.  
Article 26, Discipline, Section 3  
Article 28, Overtime, J, K, and L,  
Article 37, PayDay  
Article 40, Duration

The third negotiation session was held on May 26, 2017. The Union presented its first wage proposal dated May 11 which included an equity adjustment for senior linemen of \$0.50 + 4% on the base rate for 2016, \$0.50 + 5% on the base rate for 2017, and \$0.50 + 6% on the base rate for 2018. These proposed adjustments were to be applied to all other bargaining unit positions on a pro-rata basis in efforts to compete within the industry.

The fourth negotiation session was held on June 13, 2017, and there was no resolution on wages.

The fifth negotiation session was held on July 6, 2017. During that negotiation session, the Union verbally modified its wage proposal to a \$500 signing bonus + \$0.50/hour increase to the adjusted rate for 2016, a 2% across-the-board + \$0.50 increase to the adjusted rate + \$1.00/hour increase for all journeymen positions for 2017, and a 2% increase across-the-board + \$0.50 increase to the adjusted rate + \$2.00/hour increase for all journeymen positions for 2018 and submitted the same in writing on July 18, 2017.

The sixth and last negotiations session was held on July 25, 2017. During that negotiation session, the City offered a 2% increase for 2017 and a 2% increase for 2018. After continued discussions on wages with no agreement, the parties agreed to go to Fact-finding and notified SERB.

On August 16, 2017, SERB appointed Hyman Cohen to be the fact-finder. The hearing was scheduled for November 16, 2017. Counsel for both sides submitted position statements as required by rule. The Union's wage proposal was flawed in some manner and was brought to the attention of the Fact-finder and opposing representative prior to the commencement of the hearing. Under OAC 4117-9-05(F), the fact-finder was prohibited from taking evidence in support of any proposals not presented by 5:00 p.m. the day before the hearing unless the City agreed to allow the Union to amend its position. The City did not agree to allow the Union to amend its position. The Union withdrew from the fact-finding process. Arbitrator Cohen declined to proceed and withdrew as the fact-finder.

On November 16, 2017, SERB appointed Meeta A. Bass, as the fact-finder. By agreement of the parties, a fact-finding hearing was held on Monday, December 11, 2017, at 9:00 a.m. at the Burke Lakefront Airport, 1501 North Marginal Road, 13 Cleveland, Ohio 44114. The Prehearing statement of the City was submitted on Friday, December 8, 2017. The Union withdrew its original prehearing statement in its entirety on Friday, December 8, 2017.

At the hearing, the Employer was represented by George S. Crisci, Esq. Union was represented by Susannah Muskovitz, Esq. and Brooks Boron, Esq. Mediation was discussed at the hearing, and it was declined by the Union who was of the opinion that any attempts to mediate, at this point, would not be productive. The matter proceeded to fact-finding. At the commencement of the hearing, there were three (3) open issues: wages, health insurance benefits, and sick leave payout. The City withdrew its proposal on sick leave benefits, leaving only two (2) issues open. The City proposed the following changes in the healthcare benefits:

Health Benefits: Effective April 1, 2018, premium contributions will be increased to fourteen percent (14%)/family and fifteen percent (15%)/single for those employees participating in City-defined wellness initiatives. Non-wellness premium contributions will be eighteen percent (18%)/family and nineteen percent (19%)/single coverage.

Effective April 1, 2018, modify plan-design on Plus plan as follows:

Modify annual deductible to \$750 single / \$1500 family

Increase out-of-pocket maximums to \$1500 single / \$3000 family for in-network

Out-of-network terms to continue to be set by the carrier.

Modify premium contributions for an optional high deductible plan by requiring employees to pay nine percent (9%)/family and ten percent **(10%)/single of the City's monthly premium cost for hospitalization**, prescription drug, vision and dental coverage. Allow for employee premium contributions to be reduced to five percent (5%)/family and six percent (6%)/single for those employees participating in City-defined wellness initiatives in accordance with the plan designed.

Eliminate HMO options.

Smoking Cessation. The City reserves the right to implement a smoking cessation incentive policy during the life of this contract.

The Union accepted the proposal on the record.

The parties have one (1) Issue, Wages, opened for Fact-finding. The Employer presented **evidence and arguments in support of Employer's position on the open issue of Wages.** Both parties presented their written opening statements which were followed by the direct examination and cross-**examination of the City's witness.** **The Union's request to** present their own witnesses to rebut the argument, testimony and/or proposal of the City was denied. Union had withdrawn its pre-hearing statement. The denial was based upon the language of OAC 4117-9-05(F) which mandates the exclusion of evidence not in support of matters raised in the written statement that was submitted prior to the hearing.

At the conclusion of the hearing, the parties confirmed that the Fact Finder would issue her report on December 15, 2017.

### Description of Employer

The appointing authority is the City of Cleveland. The City of Cleveland is a chartered, home-rule municipal corporation. IBEW represents approximately **one hundred twenty four (124) bargaining unit employees in the City's Cleveland Public Power (CPP) Division** in the Department of Public Utilities, ten (10) bargaining unit employees who work in the Division of Traffic Engineering in the Department of Public Works, and five (5) bargaining unit employees in the Department of Finance.

The CPP customer base totals about 74,000 of that about 68,000 of them are residential customers in the City of Cleveland and about 6,000 represent commercial and industrial customers as well. CPP also provides the lighting called Pro Lights for two (2) different parking lots. CPP is mainly funded through customer rates. CPP sends monthly bills for consumption use or electricity charges, kilowatt-hour tax, the energy adjustment charge or power recovery, and KVAR charges.

CPP has a competitor in this industry known as CEI, which is a subsidiary of First Energy. CPP's rates in many cases are higher than CEI's rates, depending on location. Residential customers in 2016 were about two and a half percent higher than the published rates from PUCO except for one small commercial location which still has an advantage over CEI rates.

Bargaining employees who work out of the Department of Public Works and the Department of Finance are paid from the General Fund. Bargaining employees who work out of the Department of Utilities, Cleveland Public Power (CPP) Division are paid from the Enterprise Fund.

## Description of the Bargaining Unit

IBEW Local 39 represents the electrical workers at Cleveland Public Power, an electrical utility owned by the City of Cleveland. While there are two bargaining units, linemen, and foremen, there is only one Collective Bargaining Agreement.

The first bargaining group consist of the Linemen and have approximately 129 employees in the following classifications: Lineman Leader, Line Switchman, Trouble Lineman, Senior Lineman, Lineman Apprentice 4th, Lineman Apprentice 3rd, Lineman Apprentice 2nd, Lineman Apprentice 1st, Line Helper/Driver Trouble, Line Helper/Driver 2nd Year, Line Helper/Driver Start, Intern Apprentice, Senior Cable Splicer, Cable Splicer Apprentice 4th, Cable Splicer Apprentice 3rd, Cable Splicer Apprentice 2nd, Cable Splicer Apprentice 1st, Splicer Helper 2nd Year, Splicer Helper Start, Electric Meter Instruction Specialist & General Tester, Electric Meter Industrial Installer, Electric Meter Industrial Installer Leader, Electric Meter Service Installer I, Electric Meter Service Installer II, Meterman Apprentice 4th, Meterman Apprentice 3rd, Meterman Apprentice 2nd, Meterman Apprentice 1st, Transformer/Gas Turbine Repairman, Transformer/Gas Turbine Repairman Apprentice 4th, Transformer/Gas Turbine Repairman Apprentice 3rd, Transformer/Gas Turbine Repairman Apprentice 2nd, Transformer/Gas Turbine Repairman Apprentice 1st, Senior Electric Switchboard Operator, Junior Electric Switchboard Operator, Line Clearance Man, Electric Transmission & Distribution Inspector, Dispatcher Electric System Operator, TeleCommunications Technician, Low Tension Leader Lineman, Low Tension Lineman, Low Tension Trouble Lineman, Low Tension Line Helper Driver Trouble, Low Tension Line Helper Driver 2nd, Low Tension Line Helper Driver Start, Low Tension Lineman Apprentice 3rd, Low Tension Lineman Apprentice 2nd, Low Tension Lineman Apprentice 1st, Traffic Signal Control Technician I, Traffic Signal Control Technician II.

The second bargaining group consists of the Foremen, and has approximately 12 employees in the following foremen classifications: Meter Service Foreman, Line Foreman, Cable Foreman, Underground Conduit Foreman, Transformer/Gas Turbine Repair Foreman, Switchboard Operator Foreman, Low Tension Line Foreman, and Trouble Lineman Foreman.

## OPEN ISSUES

The remaining unresolved issue, Wages, is listed herein and a brief summary of the positions of the parties is provided along with a discussion and the recommendation of the Fact Finder. In making these recommendations, consideration was given to the factors set forth in Ohio Revised Code Section 4117.14 (G) (7) (a) to (f):

- Past collectively bargained agreements between the parties;
- Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and the classification involved;
- Interests and welfare of the public, the ability of the public to finance and administer the issues proposed, and the effect on the normal standards of public service;
- Lawful authority of the public employer;
- Stipulations of the parties; and
- Such other factors, not limited to those above, which are normally or traditionally taken into consideration.

### ISSUE: WAGES

#### Position of Employer

The City contends that the wage proposal is consistent with the agreements reached with other bargaining units with the exception of the CPPA settlement. In order **to avoid a conciliator's award**, the City agreed to a 0-2-2% increase on wages. The City also agreed to an additional \$1,800 into the base rate of the Patrol Officer II and 11.1 classifications and to Patrol Officer I classification of up to ten (10) years of employment, effective April 1, 2017 and an additional \$1,200 (for a total of \$3,000) into the base rate of the Patrol Officer I classification of ten (10) years or longer of employment, effective April 1, 2018. Prior to the CPPA settlement, the City reached agreements with representatives for three small bargaining units, which contained the 0-1-2 on wages and the insurance coverage modifications recommended by the Teamsters Local 244 Fact-Finding Report. However, the City subsequently agreed to extend to those bargaining units the same wage/insurance benefits deal that it struck with CPPA. Subsequent to the CPPA settlement, the City has reached tentative agreements with two other larger

bargaining units that contained the CPPA 0-2-2 on wages and the Teamsters Fact-Finding health benefits changes.

The City further contends that the current financial and projected financial status **warrants the recommendation of the City's wage proposal**. The majority of the **bargaining unit employees' work at CPP and their wages are paid from the CPP's Enterprise Fund**. CPP is sustained mostly through its own revenues generated by customer billing and revenue it receives from the General Fund. There is also a pending lawsuit against the CPP for overbilling its customer which seeks judgment in the amount of \$127 million dollars. The City argues that its financial projections **indicate that the CPP's Enterprise Fund will reach a budget deficit over the next four years**.

Additionally, the City further contends that over the years the City has attempted to address its financial deficits through restructuring, open vacancies, reduction of services, attrition, furloughs, and layoffs. Although the residents of the City passed a 0.5% income tax increase effective 2017, those funds are projected toward the stabilization of its budget, rebuilding reserves to acceptable levels, personnel needs, repair and replacement cost of its buildings, road and bridges and addressing some other needs. The City contends that it does not have resources to fund additional wages beyond its proposal.

The City proposed a wage freeze for the first year, a 1% wage increase retroactive April 1, 2017, for the second year, and a 2% wage increase for the third year.

#### Position of Union

The Union contends that there is no historical pattern bargaining amongst the bargaining units and the City. The Union avers that **the City's argument** in favor of a different wage proposal for this Union would be "inconsistent with the pattern that the City has negotiated with several other bargaining units and there is no **basis for making an exception for this bargaining unit" is disingenuous**. In the **Union's view**, these parties have historically negotiated wage increases which differ from this alleged "pattern."

The Union further contends **that the City's contention that it is unable to authorize higher wage increases because it would exceed its current ability to finance is inaccurate, and the City has a 9-million-dollar surplus**. Although CPP employees are paid out of an enterprise fund and not the City's general fund, Local 39 believes that CPP should pay its skilled workforce wages appropriate for the work performed.

Additionally, the Union contends that a comparison of Local 39 wages with wages negotiated with the Cleveland Building and Construction Trades Council, other

bargaining units in the City of Cleveland, other public sector utilities, and other private sector utilities indicates an extreme disparity in wages and that the proposed wage increase with no equity adjustment will only widen the disparity of income. The Union point out that on June 16, 2017, the City and AFSCME reached an agreement at the bargaining table that substantially increased wages for many of their bargaining unit members. In addition to all bargaining unit members receiving a \$500 bonus and a 0%, 2%, 2% wage increase over three years, the City increased the base wage for many bargaining unit unskilled positions. Moreover, the Union argues that in addition to the terms agreed upon by AFSCME and the City, many AFSCME members will receive a wage increase greater than 2% in 2018 because the City agreed to raise the minimum wage to \$15/hour.

The Union did not submit a proposal.

## DISCUSSION

The City proposes a wage freeze in year one, a 1% increase in year two, and a 2% increase in year three.

The City presented financial data for the City and the CPP. The CPP has its own enterprise fund. CPP's fund has had some significant challenges over the last several years. In 2012, receipts less expenditures equaled (\$1,201,361.). In 2013, receipts less expenditures equaled (\$12,005,577). In 2014, receipts less expenditures equaled \$779,046. In 2015, receipts less expenditures equaled \$12,353,750. In 2016, receipts less expenditures equaled (\$4,778,496). In 2017, projected receipts less expenditures total (\$40,135.). In 2018, projected receipts less expenditures total, \$1,882,032. **CPP's cash balance should** be anywhere between 120 and 180 days on hand. From 2010 through 2016, the total days cash on hand has ranged from 79.32 days in 2014 to 116.08 days in 2011. The total days cash on hand is expected to be about 60.64 days in 2017 and 61.78 in 2018. The data on projections do not reflect wage increases for all employees.

**For the past ten (10) to fifteen (15) years CPP's charges for services line has** been more or less stagnant, but their overall total revenue has increased due to the power recovery. The power costs have increased which means the power recovery needed to increase over those years as well. CPP has chosen to try to limit the additional cost to the customer due to the rates charged by their competitor CEI. In many cases, a customer needs simply to call to switch providers. Council has commissioned a rate study/cost of service study for all three (3) divisions in the Public Utilities to move forward in 2018.

From 2014 through 2017, approximately 50 percent of the kilowatt-hour tax was transferred from the general fund to CPP enterprise fund. In December,

Council approved 100 percent of the tax going to CPP in 2018 and in 2019. Without this funding from the general fund, CPP would either have to cut funding or cut further into their cash balances.

Currently CPP does not have any intention of securing any new bonds. There are bonds that CPP issued in 2008 that they intend to finish spending by the end of 2018. It is the intention of the CPP to fund any capital improvements from its current budget as well as to allow some of their operations staff to do the work.

There is a pending lawsuit against the CPP which seeks damage in the amount of \$128 million. The lawsuit arises from a claim of improper billing of the energy adjustment charge to customers.

There are restrictions on the transfers of funds between the general fund and any of the enterprise funds but the general fund does have the ability to transfer amounts to the enterprise funds. Upon reviewing such documentation and testimony, it is evident that the City has worked extremely hard to be in its current financial situation. In 2004, the City was facing almost a \$68 million deficit at the time and then the recession in 2009. The City had a permanent loss of 18 million in the property tax because of the foreclosure crisis. The City had an additional 30 million permanent annual loss in the local government fund. The City also had a \$13.2 million loss between 2014 and 2015, due to the elimination of the camera enforcement program by the vote of the people of the City of Cleveland. The State's decision to decrease the City's share of local government fund resulted in an accumulative loss of approximately \$160 million between 2008 through 2015. The City has implemented furloughs, cost-saving measures, reduction in services, attrition, open vacancies, layoffs, and no wage increases other spending curtailments in many areas have helped to reduce its expenditures for over a decade.

**The City's revenue comes from income tax withholding, property taxes, levies, state revenue and other sources.** The 2017 Projected Fund Balance at Year End indicates General Fund revenue in the amount of \$607,332,939 and Expenditures in the amount of \$607,317,316. **In November of 2016, the City's** residents passed a 0.5% income tax increase taking effect in 2017. Ninety-three (\$93) million was the total income that was expected from the levy, but only eighty-one (\$81) million could actually be used in the General Fund. The other portion, twelve (\$12) million, is set aside in a restricted account. If the levy did not pass, the City was facing a deficit and would have to balance the budget through layoffs.

The City intends to utilize the revenue generated from income tax levy to stabilize its budget. The City also intends to hire personnel to fill long-term open vacancies. The City is operating under a consent decree with the Department of

Justice which requires the hiring of additional personnel in the safety forces. The City also plans to rebuild its reserves to acceptable levels, repair and replacement cost of its buildings, roads and bridges and addressing some other needs. The City expects employees to have a minimal increase in their salary or wage base in order to cover the cost of living increases but in a controlled manner.

The City has negotiated with several bargaining units and has given a 0-2-2 with \$500.00 signing bonus wage proposal. The City only informally offered this 0-2-2 wage proposal with \$500.00 signing bonus to the Union but in its prehearing statement reverted back to the 0-1-2 wage proposal.

After reviewing the arguments, testimony, documentation provided by the City and the Union and with due consideration to the statutory criteria for fact-finding, the undersigned Fact-finder adopts the **City's proposal** to freeze the wages for the first year and a 2% wage increase in the third year. The City's proposal to pay a 1% wage increase in the second year is rejected.

The Fact-finder recommends:

**There shall be no cost of living increase to wages in the first year of the agreement (i.e., 2016).  
All wage rates will increase by 2% effective with the pay period that includes April 1, 2017.  
All wage rates will increase by 2% effective with the pay period that includes April 1, 2018.  
Upon ratification of the agreement, each bargaining unit member shall receive a \$500.00 bonus.**

Such wage increases are comparable to wage increases approved for the other bargaining units.

#### CONCLUSION

In this report, I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties may adopt alternative language by mutual agreement. After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in Ohio Revised Code Section 4117.14, the Fact finder recommends the provisions herein.

In addition, all tentative agreements reached by the parties are hereby incorporated by reference into this Fact Finding Report, and they should be included in the resulting Collective Bargaining Agreement

December 15, 2017

*/s/ Meeta A. Bass*  
Meeta A. Bass, Fact Finder  
Dublin, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Fact Finder Report was sent by e-mail on December 15, 2017.

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