STATE EMPLOYMENT
RELATIONS BOARD
SEP 5 11 08 AM '95

M

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding Between **THE CITY OF FOSTORIA** and **A.F.S.C.M.E., OHIO COUNCIL 8** **LOCAL NO. 811**	Case No.: 95-MED-01-0030

FACT FINDING REPORT AND RECOMMENDATION
OF FACT FINDER DENNIS E. MINNI, ESQUIRE

Dennis E. Minni, Esquire
Fact-Finder
SUite 104
14761 Pearl Road
Strongsville, Ohio 44136
(216)238-0365

HEARING BACKGROUND

The above matter came on for hearing on August 8, 1995 pursuant to appointment through the Ohio SERB. This Report and Recommendation represents the undersigned's efforts to resolve the single issue of a second-year Wage Reopener which survived mediation with a SERB representative and two negotiations sessions.

This public employer, the City of Fostoria, is a municipal corporation located in North Central Ohio and shall hereafter be referred to as the "Employer" or the "City". The Employee Organization deemed certified in part by the Ohio SERB to represent this bargaining unit is Local 811 of AFSCME, Ohio Council 8. The Employee Association is negotiating on behalf of thirty-nine (39) bargaining unit members and has done so with Fostoria before the implementation of chapter 4117 of the Ohio Revised Code. The Employee Organization shall hereinafter be referred to as the "Union" or "AFSCME".

The hearing was held at the office of Law Director Alicia Wolph McKay at 123 S. Main Street in Fostoria. Prior to the start of the hearing both sides presented to the Fact Finder pre-hearing position statements setting forth their demands and other required responses on the thus designated open wage issue.

The evidence was professionally presented by each side enabling the proceedings to be dispositive of both positions. The Employer submitted a Comparative Financial Statement covering the years 1994 up to July 1, 1995 prepared by the City Auditor. AFSCME offered proof that it had complied with the required sixty (60) day notice (January 13, 1995) to negotiate a reopener on wages. In the current Agreement this is contained in the Duration clause, Article 35, Section 3.

The AFSCME committee was comprised of Staff Representative Randall J. McElfresh, Local Union President Daniel A. Kracher, Kevin J. Krupp, Sherri Sickefoose, Jim Hendricks, Brad Echelberry and Larry Sherman.

The City was represented by Law Director Alicia Wolph McKay, Esq., she had in attendance the Honorable Barbara L. Marly, Mayor of Fostoria.

MEDIATION

The parties were told that mediation, if mutually requested, would not continue indefinitely to the point of becoming unproductive. Given that the SERB Mediator Mike Monfils had assisted the parties with no resolution reached, it was determined that no further mediation would be attempted by the Fact Finder thus the hearing commenced.

The remaining one (1) open issue is listed as follows:

1. Article 14 Wages (Year Two= May 1, 1995 to April 30, 1996).

The exclusion of witnesses from the hearing room was not deemed necessary by the advocates, therefore all persons in attendance remained throughout the hearing, leaving for business purposes when required to do so.

I might add that the advocates and their committees extended their full cooperation and assistance to the Fact Finder in conducting the hearing without undue delay.

RESOLUTION CRITERIA

The following recommendations take into consideration the factors enumerated in Section 4117.14 (C)(4)(e) of the Ohio Revised Code. These are:

1. Past collectively bargained agreements, if any, between the parties;

2. Comparison of the unresolved issue 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 administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4. The lawful authority of the public employer;

5. Any stipulations 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 mutually submitted to agreed upon dispute settlement procedures in the public service or in private employment.

The parties' relative positions have been amply demonstrated to and studied by the undersigned. I believe the parties understand that they are not hopelessly split on the economic issue of wages but nonetheless remain apart. My service therefore is to recommend a wage raise which will take into consideration the parties' end positions as well as any mid-point or different number I feel the is warranted. Consequently, there is no need in my view to author a treatise on the subject. I am convinced these parties understand their own and each other's proposals so I will not

needlessly expand on this by extensive reiteration of given facts. It was made clear to both sides that proceeding to past this stage without agreement leaves the ultimate "trump card", labor stoppage.

It must be understood that Fact Finders are not blessed with special knowledge or powers beyond the parties' own. My goal is to discern a "feel" of the situation sufficient to undertake rendering an equitable result. The next level puts the responsibility back onto the parties. If that causes either one of them some concern for the outcome I suggest that they give my recommendation an earnest look.

ITEMS FOR RESOLUTION

As a result of the above enumerated procedures the parties presented the following unresolved issues to the Conciliator:

1. **WAGES**

EMPLOYER'S POSITION

The City's final offer for wages in the second year is a one and one-half per cent (1.5%) increase in the base rates for all classifications in the bargaining unit.

This position is premised upon the budgetary picture and the actual record of pay increments received by this unit in recent times. The latter reflects that although there has been no percentage increase since 1991, COLA adjustments have been retained and rolled into the unit's base rates. No other group in Fostoria enjoys a COLA feature. It impacts actual payroll cost as well since overtime and longevity premiums are predicated upon the higher rate after the roll-in. Thus, for the past three (3) years the net effect has been a 1.5% to 1.8% raise for each year. The actual amount depends on whether an employee is at the top of his or her scale or at the start of the base rate.

True, the other City Unions (Police, Fire, Dispatchers) received four per cent (4%) raises this past year but in the three years preceding this year their adjustments were in the form of bonuses; unit increases which are <u>not</u> rolled into the base rates thereby putting this AFSCME unit in a more favorable (for the unit but costlier for the City) position.

As for the former, revenues fell from $5,506,577 (1991) to $5,408,090.00 (1994). At the same time the City candidly reports its expenses decreased to $5,158,258 from $5,414,930.00, so some economic relief resulted from that perspective.

In the City's view the equitable thing to do is keep the AFSCME unit at the 1.5% incremental level while the units which accepted bonuses pull up even with 4% raises.

UNION POSITION

This bargaining unit has not received a negotiated raise other than its COLA capped at $.20 since May 1, 1991. Comparable cities in the 10-20,000 population range (UX-D) are at the 3 to 4 percent level this year. The General Fund's crisis has subsided according to the City's own exhibit (EX-C) of its financial comparison of recent years.

There is no evidence that the Employer cannot afford an adjustment commensurate with today's public sector market place. What does exist is a desire to punish this unit for how its fared in past negotiations. The desire to keep this unit even with the other unions in the City makes a higher settlement than 1.5% mandatory. The other unions settled for bonuses and other terms which they wanted; AFSCME could not bargain for them and AFSCME members endured a lay-off. To imply that the others employees made more of a sacrifice during the financial crunch of recent years is unfair and not true.

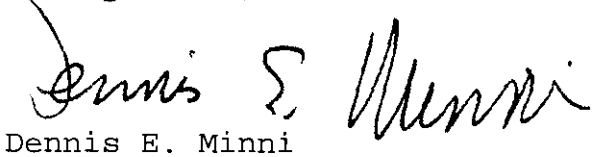
RECOMMENDATION

I recommend adjusting the base wage rates upward by 3% for the 1995-96 year. This would put the unit well within the mid-to-upper range of comparable sized cities and spend revenues more attuned to what the City's projected income is likely to realize.

Pegging this unit at 1.5% will only create an exigency to "play catch-up ball" one short year down the road when the third year reopener arrives.

This would make things more predictable and of course, if a dramatic shortfall or unforeseen expenses occur during the second year the third year reopener can be negotiated from the vantage point of that knowledge.

Respectfully submitted this 2nd day of September, 1995 at Strongsville, Ohio.



Dennis E. Minni
Fact Finder