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**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

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RELATIONS BOARD  
APR 11 9 58 AM '95

CITY OF STEUBENVILLE, :  
Employer, :  
-and- : Case No. 95-MED-01-0059  
AFSCME, OHIO COUNCIL EIGHT :  
LOCAL 2015, :  
Employee Organization. :

**FACT FINDING AND RECOMMENDATIONS**

*Philip H. Sheridan, Jr., Fact-finder*

*Issued: April 10, 1995*

*Gary Repella, Esq.  
City Law Director  
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Steubenville, Ohio 43952*

**FOR THE EMPLOYER**

*Bill Van Zandt  
General Representative  
AFSCME Ohio Council 8  
5212 Mahoning Ave., Suite 305  
Youngstown, Ohio 44515*

**FOR THE EMPLOYEE ORGANIZATION**

## STATEMENT OF THE CASE

The parties, the City of Steubenville, represented by Gary Repella, Law Director, and the bargaining unit, including approximately 112 employees in the Service, Maintenance and Clerical classifications, represented by Bill Van Zandt, General Representative, American Federation of State, County and Municipal Employees, AFL-CIO (hereafter AFSCME), have entered into negotiations for a successor contract to the contract which expired March 31, 1995.

The parties met and negotiated beginning February 13, 1995. The parties met and bargained in good faith, with nine total meetings. Many of the articles of the existing contract were accepted by the parties without dispute. The parties reached tentative agreement on all but twenty-one of the issues which were negotiated.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, Philip H. Sheridan, Jr., 580 South High Street, Columbus, Ohio, was chosen by the parties as fact-finder.

The parties agreed to a fact finding hearing on March 27, 1995, and the meeting was convened at 10:45 A.M., at the City Services Annex. In addition to their representative, Gary DuFour, City Manager, appeared on behalf of the city. In addition to their representative, John West, President of the Local, Cindy McKay, Vice President, Sharon Larkins, Secretary, Jim Bell, Chief Stewart, Susan Thompson, Negotiating Committee, and William Skinner, Negotiating Committee, appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties. The

remaining issues were not amenable to additional mediation. The matter was submitted upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues which have been resolved, the unresolved issues, and each party's proposal on the unresolved issues.

In issuing this fact finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

## **THE POSITION OF THE PARTIES AND RECOMMENDATIONS**

### **ARTICLE XVI Shift Preference**

The City's Position: The city wishes to delete this section of the contract. The city claims this practice is outdated, and of no value to labor or management. Since the work force is shrinking the city should have more flexibility in scheduling employees.

AFSCME's Position: The bargaining unit believes the language of Article XVI should remain the same as it has for the past twelve years, accurately reflecting the practice in the department of filling assignments in the bargaining unit using seniority as the deciding factor. This issue only arises when an opening occurs within a classification.

**Recommendation:** I recommend the current contract language, except I would delete the language: "It is recognized by the City that an employee shall have the right to refuse a permanent transfer to another shift against his will." I do not see any unusual limitation of management except in that sentence. It seems to me the City must retain the ability to determine how many employees will work on a given shift. If no new employee is to be hired to fill a position on afternoon shift, for instance, and the City has good cause to shift the number of employees on the day and afternoon shifts, then it seems to me the most consistent and fair method to use in filling the position would be to require the employee with the least amount of seniority in the classification to take the position.

### **ARTICLE XXI Work Schedules**

The City's Position: The City wishes to delete the language of Article XXI, and replace it with: "The City shall advise the union of any changes in departmental work

schedules." Currently, unless an emergency occurs, the City must have AFSCME's agreement in order to change the regular hours of work for individuals and for departments. The City claims a problem specifically with the Recreation department. The City would like to change the summer schedule of certain Recreation department employees in order to diminish the amount of overtime which must be paid without the change. The City claims the bargaining unit has resisted this change in order to protect the overtime situation. The City wants the right to efficiently and effectively operate its departments.

**AFSCME's Position:** The bargaining unit is satisfied with the current provision with regard to work schedules. There is no real problem which needs to be corrected. The union has cooperated at least once recently, and no real and necessary change is ever refused unless it is unreasonable. This language is the only protection the employees have from punitive or prejudicial actions taken against individual employees.

**Recommendation:** The city is asking for a change based upon the perceived need to reduce the amount of overtime which occurs because of the summer season. I also understand AFSCME's concern. I recommend the following language: "The City shall advise the union of any changes in departmental work schedules. If the union does not agree to the changes the dispute shall be decided by the application of Article X of this agreement. The change shall be for good cause."

**ARTICLE XXVII Holidays**

**The City's Position:** The City proposes changing the holiday pay article of the contract so that the holiday pay would be paid in the pay period in which it occurs, and to limit the amount of holiday pay to eight hours of straight time for those employees who do

not actually work on the holiday, and to limit the amount of holiday pay to eight hours of straight time plus pay at time and one-half for all hours worked. Currently, city employees receive two holiday pays per year. This amounts to one hundred hours of pay in addition to what would be paid under the City's position. The City argues that this position is not supported by any comparables, and is not an acceptable practice from a public relations point of view. It is adding expenses when the City cannot afford to continue.

**AFSCME's Position:** The bargaining unit asserts that the complained of policy has been in existence for thirty years, and it applies to all city employees. This is a financial issue, as the amount of reduction in pay to the employees if the City's proposal is adopted would amount to 4.8%.

**Recommendation:** I do not believe the City's short term financial problems require an almost 5% reduction in pay to some of its lowest paid employees. I recommend retention of the current contract language. If the City believes the public relations or political problems with the public's perception of this provision are so important, then it should offer something of relatively equal value to replace it. For instance, I believe pick-up of half of the employee contribution to PERS has a roughly equal value, and might be substituted for the offending article.

#### **ARTICLE XXXVI Uniforms**

**The City's Position:** The City proposes continuing the current policy of providing and replacing uniforms for the employees in the bargaining unit who have required uniforms, but the City would stop providing cleaning services. The City states this is another effort by it to reduce costs, to reflect the current status of the city.

The City does not favor paying additional hourly pay to those employees holding Class I, Class II or Class III licenses in the Water and Wastewater Departments. This is a financial issue.

**AFSCME's Position:** The bargaining unit wants the City to continue to replace eleven uniforms every two years. Half of the employees currently clean their own uniforms, but the city has a contract for at least the next year for cleaning services. The union would be willing to accept the cleaning of uniforms in return for payment of \$52.00 per year for cleaning costs. This request takes into consideration the cost savings the city wants, and is less than the actual cost of cleaning.

The bargaining unit also proposes paying an additional 50 cents per hour to employees of the Water and Wastewater Departments who hold Class I Operator's Licenses, \$1.00 per hour for holders of Class II Licenses, and \$1.50 per hour for holders of Class III Licenses.

**Recommendation:** I recommend the AFSCME offer on the uniform cleaning issue. I recommend no change in pay for license holders.

**Proposed Merger of Departments**

**The City's Position:** The City wants to combine the Utilities Collection Department with the Clerical Department, and to combine the Sewer Maintenance Department with the Pump Line Department. The City believes it needs to combine similar departments where the duties are similar in some respects. It is argued this is now necessary because of the reduced numbers of employees in these departments in order to achieve more efficiency and economy.

**AFSCME's Position:** The bargaining unit takes the position the administration of the City already has the power to realign departments by changing its table of organization and management structure. The City is only attempting to change the classifications of some employees by means of changes in the departments. The union does not understand how these changes are to be brought about in terms of seniority concerns and more general concerns about significant changes in individual employee's duties.

**Recommendation:** I recommend no change in the contract language. I agree with the bargaining unit that the City's proposal is too vague to be acceptable.

***Letter of Understanding***

During the course of negotiation and fact finding, the parties agreed to reaffirm the quoted language in the May 30, 1989, letter of understanding from Bill Van Zandt, on behalf of AFSCME, to the city manager, concerning the refuge department.

**ARTICLE XXIX Injury on Duty Pay**

**The City's Position:** The City proposes eliminating all of the language in this article and replacing it with a policy which implements a case management approach to workers compensation issues. The City is faced with one of the highest workers compensation rates for premiums for cities in the state. There is currently an arrearage of over \$800,000.00 in premium which is owed to the State. It is alleged there is fraud and mismanagement in the current system, which the City alleges also encourages staying off work rather than trying to return.

**AFSCME's Position:** The bargaining unit is not against case management as a concept, but it does not agree to taking away the other benefits contained in the Article.

The continuation of health insurance benefits by the City for the injured employees and their families for one year after injury or disability is currently provided to all employees of the city. Since the City has not proposed any actual language to respond to the union reverts to current contract language.

Recommendation: I recommend current contract language. The City's current problem with Workers Compensation rates has not been caused by any actions or failures of employees in this bargaining unit, and if there is fraud the City should be more aggressive in contesting claims. I am not convinced the City's proposal is sufficiently developed to be compared to what now exists.

ARTICLE XXXV Wages

The City's Position: The City proposes no wage increase effective April 1, 1995, and it proposes contract reopener in the second and third years of the contract for wages only if the General Fund of the City reaches a specific positive balance. The City claims a negative balance from 1994 of almost \$700,000.00 in the General Fund. The City is in arrears to the Bureau of Workers' Compensation for the years 1992 and 1993 for a total of over \$800,000.00. The City is spending more than it takes in because of increased health care, workers compensation and overtime costs. The City's anticipated revenue will not increase enough to cover current obligations, let alone a raise. The City is in a difficult situation, and the management believes cooperation and sacrifice are necessary in order for the City to avoid receivership. The City is negotiating a loan in order to meet obligations and pay past debts. The City also rejects AFSCME's proposal to pay certain classifications

a raise in the base rate of pay before any wage increase. This is also an economic situation, and there will never be perfect parity in different positions.

**AFSCME's Position:** The bargaining unit proposes a 65 cent across the board wage increase effective April 1, 1995; a 65 cent across the board wage increase effective April 1, 1996; and a 65 cent across the board wage increase effective April 1, 1997. The Union provides additional documentation to that provided by the City to show the City has understated its revenues in years past in both the General Fund and some of the funds which support particular city services. In addition, most of the City's financial problems are short term, as a result of the former Finance Director reporting payments which were not actually made. The bargaining unit also points to the ten new hires in the Police Department as evidence of the City's true financial picture. Finally, many of the bargaining unit employees are not paid from the General Fund. Several of these funds can be increased without a vote if there is a need for additional revenue. In the last contract the clerical classifications got a 25 cent raise in each of the years of the contract, and everyone in the bargaining unit received a 39 cent raise in the first year, a 40 cent raise in the second year and a 41 cent raise in the last year. The general raises amounted to about 4% in each year. Inflation was lower then, and it is running at about 3.8% at this time. The individual increases are the bargaining unit's effort to equalize certain similar positions in pay to the pay received by another similar position.

**Recommendation:** I recommend a 35 cent across the board raise effective April 1, 1995, a 40 cent across the board raise effective April 1, 1996, and a 40 cent across the board raise effective January 1, 1997. This recommendation seems appropriate considering the

raises allowed in the last contract, and the City's short term financial problems. I do not believe the City can recoup arrearages from requiring give backs by the bargaining unit which represents some of the lowest paid employees of the City. The management problems which contributed to the City's short term financial crisis appear to be solved, and the raises recommended barely allow the employees to keep up with inflation. I do not recommend any specific additional raises, as I am unwilling to try to equalized positions based on argument at a fact finding. The recommended raises may be higher or lower than raises which will be provided to other city employees, both union and non-union, but it would allow planning stability for the City. Potential reopeners for wages only would not be fair to the bargaining unit as it appears the City has some control of the General Fund balance, and could obviously affect it by settlements in other contracts and to the un-represented employees. I do not recommend the change in the probationary pay amount for clerical employees. I believe individual employees are currently protected from liability by the City when the liability arises from the performance of City employment.

ARTICLE XIII Job Vacancies

AFSCME's Position: The bargaining unit proposes requiring the City to fill job vacancies with qualified applicants within ten working days of the close of bids. The current practice allows the City to make decisions to delay when the applicant the administration might want to complete another job is the most qualified. The bargaining unit thinks some certainty is needed.

The bargaining unit also proposes paying an employee selected to train other employees \$1.00 per hour spent training. The "training assignment" is to be limited to sixty days.

The City's Position: The City asserts its right to fill or not to fill positions. This change would abridge management's right to do exactly what the union is complaining of for good business reasons.

The City takes the position employees are expected to provide the type of on the job training as a regular part of employment and it should not be recognized or rewarded with additional money.

Recommendation: I recommend the status quo, and retention of current contract language.

#### ARTICLE XV Equalization of Overtime

AFSCME's Position: The bargaining unit proposes a new sentence to this article which limits employees to no more than 16 hours of work in a 24 hour period. The bargaining unit members who work snow emergency are those intended to be protected. It is a safety issue. The union points out the norm for commercial drivers license holders is 12 hours in a row.

The bargaining unit also proposes management posting the overtime list in the department where it is worked, and also verifying the "call-outs". The union believes this more open method of documenting the overtime will be of benefit to the employees and management because it will lessen the number of disputes.

The City's Position: The City believes the number of hours worked is already covered by other regulations, and the union's proposal is vague and confusing.

The City does not want to take additional responsibility for the administration of a program which is a union issue.

Recommendation: I recommend posting of the record which the supervisor keeps of overtime. This document could easily reflect the "call-ins" as well. The more open these records are, the less likely it is there will be disputes which linger and are affected by lack of information. I do not recommend the language concerning the total hours of work. The addition of such a rule does not seem necessary.

ARTICLE XIX Job Descriptions/New Jobs

AFSCME's Position: The bargaining unit proposes new language to the contract which requires binding arbitration of disputes concerning substantial changes in the method of operation, tools, or equipment of a job, or concerning the establishment of a new job which has not been previously classified. Among the issues would be pay, classification and duties.

The City's Position: The City does not see a need to give up management rights concerning duties to be performed by positions. As such changes affect terms and conditions of employment they are already subject to the grievance process.

Recommendation: I recommend current contract language. I did not hear any real issues which currently exist and should be addressed by this contract.

ARTICLE XXVI Temporary Pay Rate

**AFSCME's Position:** The bargaining unit proposes payment of the TPR for all hours worked. The problem to be addressed is that management currently schedules temporary assignments so as to avoid paying the rate.

**The City's Position:** The City opposes changing from the current language which provides the payment need only be made after the employee has worked at the higher position for three consecutive work days. This is another financial issue for the City.

**Recommendation:** I recommend the current contract language.

**Proposed Bonus for Perfect Attendance**

**AFSCME's Position:** The bargaining unit proposes payment of up to \$400.00 for bargaining unit members who do not miss work because of illness.

**The City's Position:** The City sees this as a financial issue which is unnecessary because the sick leave is already bought back up to one half of accumulated sick leave each year.

**Recommendation:** I recommend no change in the contract on this issue.

**ARTICLE XXVIII Sick Leave**

**AFSCME's Position:** The bargaining unit proposes changing the language of the contract back to the language which existed in the contract before the current one. Before the current contract the bargaining unit was told by the City all of the other union and non-union positions with the City would also accrue 1.25 days per month instead of the previous bank of 15 days per year. The bargaining unit wants to be treated the same as all other employees of the City on accrual of Sick Leave.

The bargaining unit also proposes pay out of 50% of accrued sick leave to employees with more than ten years service who retire or are disabled.

Finally, the bargaining unit proposes adding a clarification to the article concerning when a medical statement is necessary.

The City's Position: The City prefers the current language. The City asserts that it does not treat the employees in this bargaining unit differently concerning the accrual of sick leave. The change from 20 years of service to 10 for payout of 50% of sick leave is potentially costly, and uncertain in effect.

Recommendation: I recommend current contract language.

ARTICLE XXXI Hospitalization and AFSCME of Ohio Care Plan Coverage

AFSCME's Position: The bargaining unit proposes continuing the current health care benefits, allowing coverage after 30 days instead of 120 days. In addition, the bargaining unit asks for an increase in the payment now made for the AFSCME of Ohio plan from \$31.00 per month to \$38.50. The union states 120 days is too long to wait for coverage. The only way in which the AFSCME program can be retained is through payment by the City, and the premium only went up \$7.50 from the last three year premium amount for life, vision, dental, hearing and prescription drug coverage.

The City's Position: The City wants to impose a new system for health care which includes managed care and increased deductibles. The City would stop providing the AFSCME Plan. Both of these proposals are directed at substantial cost savings.

Recommendation: I recommend the City continue the valuable AFSCME Plan payments on behalf of this bargaining unit. I also recommend the bargaining unit cooperate

with the City in the implementation of the preferred provider managed care program which will be the plan for all of the employees of the City. In other words, this bargaining unit should receive the same health care benefits, in addition to the AFSCME Plan, which are being offered to the other represented and non-represented employees of the City.

ARTICLE XXXII Vacation Schedule

AFSCME's Position: The bargaining unit proposes a change in the way in which vacation leave is accrued. Employees with 15 to 20 years of service would accrue 5 weeks of vacation, employees with 20 to 25 years of service would accrue 6 weeks of vacation, and employees with over 25 years of service would accrue 7 weeks of vacation. The bargaining unit asserts that all other employees of the City accrue at least this much vacation, and the police get up to 8 weeks.

The City's Position: The City sees this as another financial issue which the City is unable to consider because of its uncertainty, and additional cost.

Recommendation: I recommend the change proposed by the union. The five year splits are reasonable, and bringing the bargaining unit up to those benefits enjoyed by the other employees of the City seems appropriate in this area.

ARTICLE XXXIII Longevity

AFSCME's Position: The bargaining unit proposes payment of \$3.75 per month for each month of service for employees with over 4 years of service. This is the same as the Police receive. The comparables provided show the City is below the norm.

The City's Position: The City does not favor longevity pay for its employees and does not propose any increases in it. This is a financial issue, and the City is not able to pay the additional amount.

Recommendation: I recommend the current contract language.

ARTICLE XXXIV Shift Differential

AFSCME's Position: The bargaining unit proposes increasing the shift differential to 25 cents per hour for afternoon shift, and to 50 cents per hour for the afternoon shift. The current amount of 10 cents and 15 cents does not compensate for the inconvenience of the two shifts.

The City's Position: The City proposes current contract language because of financial concerns.

Recommendation: I recommend the status quo.

ARTICLE XXXVIII Duration

The Parties basically agreed at the fact finding to a three year agreement beginning April 1, 1995, and ending March 31, 1998. The real dispute concerned wages and the potential reopener which the city proposed.

Recommendation: I recommend a three year agreement beginning April 1, 1995, and ending March 31, 1998.

I recommend adoption of all of the tentatively agreed articles as a part of the agreement.

Of course the parties can continue to negotiate, and enter into an agreement which reflects all or none of the recommendations made in this fact finding. In this particular negotiation many of the issues should be determined by serious bargaining. I encourage the parties in their continuing efforts.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip H. Sheridan, Jr.", written over a horizontal line.

PHILIP H. SHERIDAN, JR.

Fact-finder

S.C. #0006486

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