

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

STARK COUNTY SANITARY ENGINEER,

Employer,

-and-

Case No. 2017-MED-08-0883

AFSCME OHIO COUNCIL 8, AFL-CIO,  
LOCAL 959

Employee Organization.

**FACT-FINDING**

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

*Issued: March 19, 2018*

Leslie I. Kuntz, Esq.  
Krugliak Wilkins Griffiths & Dougherty Co LPA  
4775 Munson Street Northwest  
Canton OH 44735-6963  
[likuntz@kwgd.com](mailto:likuntz@kwgd.com)

For the Employer

Michael A. Deluke  
Staff Representative AFSCME  
1145 Massillon Rd.  
Akron OH 44308  
[mdeluke@AFSCME8.org](mailto:mdeluke@AFSCME8.org)

For The Employee Organization

**STATEMENT OF THE CASE**

The parties, the Stark County Sanitary Engineer, represented by Leslie I. Kuntz, Esq., and the bargaining unit, the AFSCME Ohio Council 8, AFL-CIO, Local 959, 59 total employees in the following classifications: Assessment & Permits Technician, Construction Inspector, Engineering Technician; Equipment Operator, Laborer, Maintenance Electrician, Maintenance Mechanic, Radio Operator, Treatment Plant Aide, Treatment Plant Operator 1 & 2, Wastewater Lab Technician, Waterworks Technician, Toll and Parts Technician, Secretary 1, Data Clerk, Heavy Equipment Operator, Line Maintenance Laborer, and Crew Leader, represented by Michael A. Deluke, Staff Representative, have entered into negotiations for a successor contract to the contract that expired December 12, 2017.

The parties met and bargained in good faith with at least four face-to-face meetings and additional contacts electronically between the parties. The parties without dispute, or through negotiation, reached tentative agreement on current language or changes in the collective bargaining agreement, on fifteen articles, no proposals were made on twenty-six articles, and Issues remain in four articles of the agreement.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, the State Employment Relations Board appointed Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, as fact-finder.

The parties agreed to a fact-finding hearing on March 1, 2018, and the meeting was convened at 10:30 a.m. at the Stark County Sanitary Engineer's Office. In addition to their representative, James Troike, P.E., Sanitary Engineer, and Danielle Seese, Department Administrator, appeared at the hearing for the employer. In addition to their representative, Jason Mueller, Local President, Roy Spencer, Local Vice-president, and Tony Angione,

Local Steward, appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties.

After an attempt at mediation, the parties agreed that the remaining issues were not amenable to additional mediation. The parties submitted the matter upon testimony, statements, documents, and arguments presented to the fact-finder. In consideration of scheduling issues for the city, the parties agreed to the issuance of this fact finding on March 19, 2018.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current (expired) contract, memoranda of agreement, agreed extensions of time for fact finding, the articles that are unchanged or have been resolved, the unresolved articles, 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 21 SICK LEAVE SECTIONS 1 & 2**

The Sanitary Engineer's position: The employer proposes current contract language in response to the bargaining unit's proposal to change the way in which sick leave is credited. Since 1993, bargaining unit members have accrued 2.3 hours of short term sick leave and 2.3 hours of long term sick leave for each eighty hours of active pay status. This long existing bargain was implemented to deal with a perceived problem with sick leave abuse, instead of using the disciplinary process already in the agreement. According to the employer, the existing language has worked well for over 25 years, and

the bargaining unit has not shown any justification for change. The case of the employee who was terminated never applied to use leave and was under a “last chance” agreement.

The bargaining unit’s position: The bargaining unit proposed having its members accrue sick leave in the same manner that all other Stark County public employees do-4.6 hours of sick leave accumulation for each 80 hours on active pay status. The equal split of leave into short-term and long-term sick leave unfairly impacts good employees who happen to have small children, elderly parents, chronic health problems, or other issues that would lead to increased use of one-day leave rather than 5-day use supported by a doctor’s statement. The bargaining unit does not object to the appropriate use of the disciplinary process as set out in the contract, if the employer believes an individual bargaining unit member is abusing the process.

Discussion and recommendation: I recommend the change proposed by the bargaining unit, and the proposed language that they submitted with their submission at the hearing. I can’t discern what the success of the current language is, except that no one has been disciplined for sick leave abuse in anyone’s memory. The good employees who use sick leave should have no fear of discipline and should not be treated differently than other county employees in similar jobs. The positions in the Sanitary Engineer’s table of organization don’t appear to predict a different result with respect to sick leave use or abuse if they are treated in the same manner as other county employees.

## **ARTICLE 22, VACATION**

The Sanitary Engineer’s position: The employer proposes current contract language in the vacation article. The bargaining unit’s proposal is for the employees to be able to schedule all accrued vacation leave in one-day increments. The current method requiring a five-day

vacation period preference for a week of vacation, single days for the second week (with 72 hours' notice), either a 1-4 or a 2-3 day split week for the third and fourth accrued vacation weeks, and then single days for the fifth week accrued by senior employees allows the employer to appropriately set schedules especially for the two member crews that perform the majority of the tasks that require licensure. This system has worked for 27 years.

The bargaining unit's position: The bargaining unit proposes allowing bargaining unit members to schedule all their vacation leave in one-day increments with 72 hours' notice to the employer. All other bargaining unit members and non-union positions in Stark County can schedule their accrued vacation in increments that they choose, and the employer has ample authority to deny vacation requests by this bargaining unit for operational reasons. The members especially dislike the split-week requirements.

Discussion and recommendation: The vacation article provides a scheme that has changed over the years, but the employer has successfully rejected the proposed change to all single day scheduling for three or four contract negotiations. The agreement also provides that vacation is a "use it or lose it" proposition each calendar year (with a few exceptions for separation, or death). The bargaining unit did not provide me with any instances of bargaining unit members losing vacation because they were unable to schedule the time off under the current requirements. However, lack of parity with other county public employees is a strong consideration. My recommendation is that the parties maintain the language of Article 22, Section 3, which requires one five-day vacation request before January 31. I recommend the following changes to Article 22, Section 4:

Notwithstanding the provisions of Section 3, an employee at his option may take the remainder of his accrued vacation leave in one (1) day periods during the calendar year, except during any week in which he is assigned to "on-call" status under Section 6 of Article 17, subject to approval of the Employer, whose approval must

be requested at least seventy-two (72) hours in advance, unless waived by the Employer.

(Remainder of Section 4 deleted)

#### **ARTICLE 27 WAGE RATES**

The Sanitary Engineer's position: The employer proposes no change to the article that would provide longevity pay for its bargaining unit members. The proposal by the bargaining unit was not accompanied by any willingness by the bargaining unit to give up anything in negotiations to obtain the longevity pay. Each of the other county employers who do have longevity in their contracts bargained for changes in the way their employees were paid (doing away with steps, changing from 40 to 80-hour work periods), and accomplished changes that management wanted. The parties already reached a tentative agreement for a 2% wage increase, and the bargaining unit's proposal would cost an additional \$156,000.00 in the three years of this agreement.

The bargaining unit's position: The bargaining unit wants parity with the Jobs and Family Services bargaining unit on longevity and points out that the Sheriff and Engineer also provide longevity to their bargaining unit members, and county non-bargaining unit employees enjoy a smaller longevity provision. The added cost to the employer per year is about \$52,000.00, and the Sanitary Engineer has over \$30,000,000.00 in carryover funds.

Discussion and recommendation: The argument by the bargaining unit for parity is one that is usually proposed by management to justify county-wide insurance, for instance. Clearly, longevity in other local public employment agreements is persuasive, and relevant to the things I am required to consider under Chapter 2743. Longevity has its champions and its detractors, but on balance, I recommend no change in the article, in part because of

management's explanation of how longevity became a part of the other contracts, and in part because I believe longevity should be the product of negotiation.

#### **ARTICLE 29 PERS CONTRIBUTION**

The Sanitary Engineer's position: The employer proposes ending the 4.25% pension pick-up that is currently enjoyed by a little over 50% of the bargaining unit members. This proposal is in response to the bargaining unit's requests for parity. The pension pick-up is not a part of the non-bargaining unit members, and it should be ended if the bargaining unit is granted its longevity proposal.

The bargaining unit's position: The bargaining unit supports current contract language. They should not be penalized for requesting what other similarly situated county employees receive. The pension pick-up is in contracts with the Sheriff, Jobs and Family Services, Building Department, and the Engineer.

Discussion and recommendation: I recommend current contract language. The parties clearly negotiated the pension pick-up in lieu of wage increases and limited it by not providing it to new bargaining unit members hired after a date certain. Although management now thinks pension pick-up may not have been the best practice, the best way to remove it is through negotiation.

#### **CONCLUSION**

In addition to the comments above, I considered the information provided to me by both parties and am making my recommendations after consideration of the statutory and administrative requirements provided in Chapter 4117 of the Revised Code.

I recommend that the parties adopt the unchanged articles that were listed in both parties' submissions, and the tentative agreements reached by them as provided in the documents submitted to me by the parties. The parties cooperated in presenting their positions to me and in dealing with one another. The courtesy and professional behavior was evidence of the good relations between the parties. Good faith bargaining does not necessarily lead to agreement, but I encourage the parties to continue to bargain in good faith even if they are unable to agree on my recommendations.

Respectfully submitted,

\s\ Philip H. Sheridan, Jr.  
PHILIP H. SHERIDAN, JR.  
Fact-finder  
S.C. #0006486  
915 South High Street  
Columbus, Ohio 43206-2523  
614-445-0733  
[Philsheridan68@gmail.com](mailto:Philsheridan68@gmail.com)

#### CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by email this 19th day of March 2018, to the principal representatives of the parties, and by email to State Employment Relations Board.

\s\ Philip H. Sheridan, Jr.  
PHILIP H. SHERIDAN, JR.