

JACKSON CITY COUNCIL

Regular Session

August 22, 2016

7:00 p.m.

Call to Order..... President Brown

Pledge of Allegiance..... Mr. Ondera

Opening Prayer..... Mr. Hensler

ROLL CALL

VISITORS

APPROVAL OF MINUTES

August 8, 2016 Regular Session and August 9, 2016 Special Session.

COMMITTEE REPORTS

- Utility –Elliott (Chairman), and Foster and Ondera
- Budget & Finance – Hensler (Chairman), Elliott, and Ondera
- Police, Fire, & Traffic – Kitchen (Chairman), Queen, and Jones
- Service – (Street & Alley, Recreation, Buildings & Grounds) Foster  
Chairman), Queen, and Hensler
- City Auditor
- Law Director
- Mayor
- Service/Safety Director

ORDINANCES AND RESOLUTIONS

CORRESPONDENCE

OLD BUSINESS

NEW BUSINESS

ADJOURN

JACKSON CITY COUNCIL  
*Minutes from*  
AUGUST 8, 2016  
7:00 P.M.  
REGULAR SESSION

Jackson City Council met in regular session on Monday, August 8, 2016 at 7:00 p.m. at Jackson City Council Chambers. President Eric Brown called the meeting to order. The Pledge of Allegiance was led by Mr. Elliott. The Prayer was given by Mr. Hensler.

Roll call was taken as follows:

- Mr. Ondera-present
- Mr. Kitchen-present
- Mrs. Jones-present
- Mr. Hensler-present
- Mr. Queen-present
- Mr. Elliott-present
- Mr. Foster-present

**VISITORS**

**APPROVAL OF MINUTES**

Mr. Hensler made a motion to approve the minutes from July 25, 2016 Regular Session, seconded by Mr. Ondera. In a voice vote, all members agreed.

**COMMITTEE REPORTS**

**UTILITY**-No report.

**BUDGET & FINANCE**-No report.

**POLICE, FIRE, & TRAFFIC**-No report.

**SERVICE –(STREET & ALLEY, RECREATION, BUILDINGS & GROUNDS**-No report.

**CITY AUDITOR**

Mr. Foster stated the city received a good audit.

**LAW DIRECTOR**

Mr. Kirby stated at the last meeting someone had a question regarding the Supervisor's Union. He researched it and made copies of the info for everyone.

**MAYOR**

Mayor Heath stated at the last Budget & Finance Committee meeting, Mr. Kitchen asked if the Mayor could come up with some plan for how the income tax money would be spent. Mayor Heath drove the city streets and made notes of the work the streets, sidewalks, and buildings would need and said this could be used as a starting point. If they could come up with some target areas, they might get more help from the CHIP program. Information could be given out to inform citizens of the CHIP program who might not be aware there is help available. If the tax is imposed, they could possibly start on some of the projects immediately. They can do intercity transfers for up to one year, as long as they new the money would be

# JACKSON CITY COUNCIL

*Minutes from*

AUGUST 8, 2016

7:00 P.M.

REGULAR SESSION

coming in to replace it. They could start paving if there is a paver available and also on the creek cleaning. The other project would be the curbs and sidewalks from Main St. starting at Wal-Greens to Ralph St. Another important issue is the drainage on Hilltop Drive. A lot of the issues are in the 2<sup>nd</sup> ward. It would really improve that area. This will give everyone an idea of how the money will be spent. Next year he would like to be able to work on the Memorial Building. Mayor Heath said they also need an addition to the fire station so they can house all of the fire trucks. Mayor Heath said as soon as the tax is approved, the Administration will start on projects the next day. He promises the money will be spent as efficiently as possible.

Mr. Queen stated they are taking the sidearm along the creeks and it looks really nice. Mayor Heath is hoping the USDA can help with the creeks.

Mr. Queen asked when the State is going to be paving SR 93. Mayor Heath said either 2019 or 2020. The sidewalks and curbs will have to be done by the city prior to that.

Mr. Queen asked if the \$1.2 million estimated city income tax revenue is coming from RITA or the Auditor's office. Mr. Reed said it came from RITA.

Mr. Elliott asked if the amounts for the fire station and Memorial Building were payback loans. Mayor Heath stated yes. Mr. Sheward said those projects are too much do in steps. They need to be done all at one time.

Mr. Kitchen thanked the Mayor for his plan on the income tax. He also appreciated the Mayor publicly telling everyone he is going to have the Administration behind him to get the projects started.

## **SERVICE DIRECTOR**

Mr. Sheward stated everyone received a copy of the letter from ODOT stating they will be receiving \$827,000 from the Small Cities Grant for McCarty Lane. He wanted to thank Alyssa Taylor and Vaughn Wilson and his crew. They have to figure out how to make the funding work. They have asked for an extension on one grant, one grant runs out next year, and the Small Cities Grant won't start until July of 2018. They might have to do half at a time or borrow the money and pay it back when the money is available. He also thanked CT Consultants for their work.

Mr. Sheward stated August 10th will be the deadline for grass mowing. If it isn't mowed, a letter will go out stating the city will mow it at the owner's expense.

Monday, August 15<sup>th</sup> will be the next mosquito spraying with weather permitting. If weather does not permit, it will happen on Tuesday.

Mayor Heath passed out a list of grants they have received for bridges and streets which added up to about \$4 million. He thanked Mr. Sheward for all of his work on securing these grants.

## **ORDINANCES AND RESOLUTIONS**

### **ORDINANCE NO. 36-16**

**AN ORDINANCE PROVIDING FOR AN INCOME TAX AT THE RATE OF 1% FOR THE PURPOSES OF MAINTENANCE OF THE CITY'S STREETS, ALLEYS, BRIDGES AND SIDEWALKS, AND FOR THE MAINTENANCE, RENOVATION AND REPAIR OF CITY BUILDINGS USED FOR MUNICIPAL PURPOSES FOR THE CITY OF JACKSON, OHIO.**

JACKSON CITY COUNCIL

*Minutes from*  
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REGULAR SESSION

Second Reading

Mr. Elliott made a motion to amend the ordinance to include demolition, creek cleaning, and fire station addition. Mrs. Jones seconded the motion. In a voice vote, all members agreed.

**ORDINANCE NO. 37-16 (AMENDED)**

**AN ORDINANCE CALLING FOR THE PLACEMENT ON THE BALLOT OF THE NEXT GENERAL ELECTION IN THE CITY OF JACKSON, OHIO, THE ISSUE OF ENACTING AN INCOME TAX AT THE RATE OF 1% FOR THE MAINTENANCE OF THE CITY'S STREETS, ALLEYS, BRIDGES AND SIDEWALKS AND FOR THE MAINTENANCE, RENOVATION, AND REPAIR OF CITY BUILDINGS USED FOR MUNICIPAL PURPOSES FOR THE CITY OF JACKSON, AND DECLARING AN EMERGENCY. AMENDED TO INCLUDE CREEK CLEANING FOR FLOOD CONTROL AND DEMOLITION OF CONDEMNED PROPERTIES.**

Second Reading

Mr. Queen made a motion to suspend the rules, but there was no second.

Mr. Queen asked the council to request a Special meeting, since it has to be at the Board of Elections by August 10<sup>th</sup>.

Mr. Queen made a motion to have a Special meeting at 8:00 pm. on August 9<sup>th</sup> to discuss Ordinances No. 36-16 and Ordinance No. 37-16. Mr. Hensler seconded the motion and third by Mr. Elliott. Mr. Brown asked the all council members be present.

Mr. Ondera made a motion to amend Ordinance No. 37-16 to include the addition to the fire house, seconded by Mr. Kitchen. In a voice vote, all members agreed.

**ORDINANCE NO. 38-16**

**AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF JACKSON TO ENTER A CONTRACTUAL RELATIONSHIP BETWEEN THE CITY OF JACKSON AND THE REGIONAL INCOME TAX AGENCY (RITA) FOR THE PURPOSE OF PROVIDING ADMINISTRATIVE SERVICES FOR THE MUNICIPAL INCOME TAX AND DECLARING AN EMERGENCY.**

Second Reading

Mr. Reed asked if this should be included in the Special meeting. Mr. Brown stated it could be read at the next Regular meeting.

**ORDINANCE NO. 40-16**

**AN ORDINANCE APPROVING ADDITIONAL APPROPRIATIONS IN THE CHIP GRANT FUND AND DECARING AN EMERGENCY.**

First Reading

Mr. Kitchen made a motion to adopt the ordinance, seconded by Mr. Hensler. In a voice vote, all members agreed.

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Mr. Reed stated this is just an Administrative issue to finish out the CHIP Fund money. He would like for it to be passed tonight.

Mr. Ondera made a motion to suspend the rules, seconded by Mr. Hensler. In a roll call vote, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-yes

In a roll call vote to adopt the ordinance, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-yes

**Ordinance No. 40-16 duly adopted.**

**ORDINANCE NO. 41-16**

**AN ORDINANCE CREATING THE MCCARTY LANE RE-BUILD FUND AND ESTABLISHING APPROPRIATIONS AND DECLARING AN EMERGENCY.**

First Reading

Mr. Hensler made a motion to adopt the ordinance, seconded by Mr. Elliott. In a voice vote, all members agreed.

Mr. Reed stated this is just to establish a fund for when the funds come in for the McCarty Lane project.

Mr. Hensler made a motion to suspend the rules, seconded by Mr. Elliott. In a roll call vote, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-yes

JACKSON CITY COUNCIL  
*Minutes from*  
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REGULAR SESSION

In a roll call vote to adopt the ordinance, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-no

**Ordinance No. 41-16 duly adopted.**

**CORRESPONDENCE-None**

**OLD BUSINESS**

**NEW BUSINESS**

Mayor Heath stated the Farmer's Market is still going on. They are located on Harding Ave. and are open every Saturday from 9:00 a.m.-1:00 p.m.

Mr. Kitchen said the Pig Iron Days was a huge success.

Mr. Brown stated someone brought to his attention the impound storage lot cost should maybe be increased. Right now it is \$18 per day and other places in town are charging more.

Mr. Queen wanted to let everyone know 788 will be closed all week due to work on the railroad.

Mr. Kitchen made a motion to go into Executive Session at 7:46 p.m. to discuss contractual matters, seconded by Mrs. Jones. In a roll call vote, council voted as follows:

Mr. Ondera-yes  
Mr. Kitchen-yes  
Mrs. Jones-yes  
Mr. Hensler-yes  
Mr. Queen-yes  
Mr. Elliott-yes  
Mr. Foster-yes

Mr. Queen made a motion to return to Regular Session at 8:02 p.m., seconded by Mr. Elliott. In a voice vote, all members agreed.

Mr. Queen made a motion to adjourn at 8:03 p.m., seconded by Mr. Hensler. In a voice vote, all members agreed.

  
\_\_\_\_\_  
Sherry Barr, Council Clerk

  
\_\_\_\_\_  
Eric Brown, Council President

Date 8-22-16

Date 8/22/16



# OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223  
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

August 4, 2016

Mr. William Sheward  
City of Jackson  
145 Broadway Street  
Jackson, Ohio 45640

Dear Mr. Sheward:

The Ohio Department of Transportation (ODOT) is pleased to inform you that the McCarty Lane Reconstruction project has been selected for funding in the Small City Program. ODOT will provide 95% of the eligible costs, up to a maximum of \$827,000 in Federal funds through the Small City Program, in State Fiscal Year 2019.

Please contact Mark Johansen, in the ODOT District 9 office at (740) 774-9057, to schedule a project scope meeting and start the process of programming your project. It is very important to establish solid commitment dates for your project. Failure to meet the programmed sale date could result in funding being withdrawn.

If you have any questions, please feel free to contact Nichole Wade at (614) 752-6581 or by e-mail at [Nichole.Wade@dot.ohio.gov](mailto:Nichole.Wade@dot.ohio.gov).

Respectfully,

A handwritten signature in black ink, appearing to read "Jeffery Peyton".

Jeffery Peyton  
Local Programs Manager  
Office of Local Programs

c: Mark Johansen, ODOT District 9

# INCOME TAX SPENDING VISION

## IF IMPOSED

EXPENDITURE	2016	2017	2018	2019	2020	2021-2030	Add. Inc.
Paving	**** 250,000	275,000	500,000	525,000	525,000	525,000	25%
Creek Cleaning	40,000	50,000	50,000	50,000	50,000	50,000	10%
Memorial Building	0	100,000	225,000	240,000	250,000	250,000	25%
Building Demolition	0	90,000	90,000	50,000	50,000	50,000	10%
Costs - Curbs	30,000	40,000	35,000	35,000	25,000	25,000	10%
Costs - Sidewalks	30,000	20,000	25,000	25,000	25,000	25,000	20%
Fire station addition	0	75,000	75,000	75,000	75,000	75,000	0%
Anticipated Income	350,000	650,000	1,000,000	1,000,000	1,000,000	1,000,000	100%

\*\*\*\* = Might have to be moved to Spring, 2017 if paving contract is unable to be consummated

Curbs	Main St. - So.	Main St. - No.	Residential	Residential	New (shared)
Curbs	Repaved Streets	Repaved Streets	Repaved Streets	Repaved Streets	Repaved Streets
Sidewalks	Main St. - So.	Main St. - No.	Residential	Residential	New (shared)

NOTE: Some additional curb work could be incorporated into areas where paving will take place

## PROPOSED STREET PAVING SCHEDULE

2016	2017	2018	2019
Bennett Avenue *	Central Avenue	Andrew Street	Diamond Street
Chestnut Street *	Crossin Street	Carson Street	Dungan Street
Globe Street	Freeman Street	East Street	Main Place
High Street *	Logan Street	Earl Street	Main Street
Orange Street **	Mill Street	George Street	Mound Street (west)
Star Street *	Ohio Street	Hunt Street	Starr Street
Trago Avenue	Owen Street	Jewell Street	
Tropic Street	Putnam Street	Longworth Street	David Avenue *
	Summit Street	Smith Place	Main Street **
Hilltop Drive plus drainage on east end Plus previous paving schedule	Area bordered by Athens, Chillicothe and Morton streets	Triumph Street	Oiler Avenue
		York Street	Puerto Drive
		Coffman Street	Ralph Street
	Brookside Drive	High Street	Redondo Drive
	Fleetwood Avenue	Jones Street	Robin Hill Lane
Area bordered by South, Vaughn, Huron streets and David Avenue	Kenwood Avenue	Mitchell Street (east)	
* - from Huron St. to South St.	Orange Street **	Mitchell Street (west)	* = State St. to South St.
** - David Ave. to Bennett Ave.	Payne Street	Mound Street (east)	** = Bridge St. to High St.
	Westlawn Street	Vine Street	
		Wood Avenue	<b>2020</b>
	Area bordered by South Street and David Avenue	Water Street	Local share of St. Rt. 93, others that are deemed necessary
	** - from David Avenue to Payne Street	(Bridge to Broadway)	
	Chillicothe Street (Morton to city limits)		



# INCOME TAX SPENDING VISION

## IF PASSED BY THE VOTERS IN NOVEMBER, 2016

EXPENDITURE	2016	2017	2018	2019	2020	2021-2030	Add. Inc.
Paving	0	250,000	500,000	525,000	525,000	525,000	25%
Creek Cleaning	0	40,000	50,000	50,000	50,000	50,000	10%
Memorial Building	0	100,000	225,000	240,000	250,000	250,000	25%
Building Demolition	0	0	70,000	50,000	50,000	50,000	10%
Costs - Curbs	0	60,000	45,000	35,000	25,000	25,000	10%
Costs - Sidewalks	0	50,000	35,000	25,000	25,000	25,000	20%
Fire station addition	0	0	75,000	75,000	75,000	75,000	0%
 Anticipated Income	 0	 500,000	 1,000,000	 1,000,000	 1,000,000	 1,000,000	 100%

Curbs	0	Main St.	Residential	Residential	Residential
Curbs	0	Repaved Streets	Repaved Streets	Repaved Streets	Repaved Streets
Sidewalks	0	Main St.	Residential	Residential	Residential

NOTE: Some additional curb work could be incorporated into areas where paving will take place

## PROPOSED STREET PAVING SCHEDULE

2017	2018	2019	2020
Bennett Avenue *	Central Avenue	Coffman Street	David Avenue *
Chestnut Street *	Crossin Street	High Street	Main Street **
Globe Street	Freeman Street	Jones Street	Oiler Avenue
High Street *	Logan Street	Jones Street	Puerto Drive
Orange Street **	Mill Street	Mitchell Street (east)	Ralph Street
Star Street *	Ohio Street	Mitchell Street (west)	Redondo Drive
Trago Avenue	Owen Street	Mound Street (east)	Water Street
Tropic Street	Putnam Street	Vine Street	
	Summit Street	Wood Avenue	* = State St. to South St.
			** = Bridge St. to High St.
Hilltop Drive plus drainage on east end Plus previous paving schedule	Area bordered by Athens, Chillicothe and Morton streets	Diamond Street	Local share of St. Rt. 93, others that are deemed necessary
	Andrew Street	Dungan Street	
	Carson Street	Main Place	
	East Street	Main Street	
Chillicothe Street (Morton to city limits)	Earl Street	Mound Street (west)	
	George Street	Starr Street	
Area bordered by South, Vaughn, Huron streets and David Avenue * - from Huron St. to South St. ** - David Ave. to Bennett Ave.	Hunt Street		
	Jewell Street	Robin Hill Lane	
	Longworth Street		
	Smith Place		
	Triumph Street		
	York Street		
	Brookside Drive		
	Fleetwood Avenue		
	Kenwood Avenue		
	Orange Street **		
	Payne Street		
	Westlawn Street		

Bordered by South St. & David Ave.  
\*\* - from David Avenue to Payne Street

# JOSEPH D. KIRBY

Attorney for the City of Jackson

227 E. Main Street  
Jackson, OH 45640  
Phone: (740) 286-3735  
Fax: (740) 288-2161

August 8, 2016

Members of Jackson City Council  
William Sheward, Service Safety Director  
Randy Heath, Mayor

Re: OEP/AFSCME Bargaining Agreement

To all,

At the most recent council meeting I was asked to research the legality of the bargaining agreement with the OAPSE/AFSCME Local 410. This contract covered the bargaining unit made up of the following employees:

1. Water Distribution/Waste Water Collection/ Storm Water Superintendent
2. Waste Water Plant Superintendent
3. Executive Assistant (superintendent of administrative services/cemetery)
4. Mechanical Superintendent
5. Electric Superintendent
6. Utilities Billing Superintendent
7. Street and Alley/Garbage Superintendent
8. Water Plant Superintendent
9. Director of Water and Waste Water

The issue as to whether the City is required to recognize the bargain unit has previously been addressed by SERB. In 2005, SERB opinion 2005-0002, the City of Jackson was ordered to recognize this bargaining unit, a copy of the SERB Opinion is attached. The recommendation was that the State Employment Relations Board should issue an order requiring the City to recognize the collective bargaining agreement between the City of Jackson and the Ohio Association and public school employees for, AFL/CIO and its local 410.

Ohio has enacted laws to permit the various municipalities and political subdivisions and bargaining groups to enter into bargaining agreements. However, R.C. Section 4117.01(C) excludes certain employees from participating in bargaining agreements. For the purposes here, those employees include management level

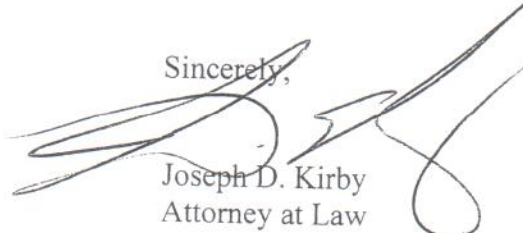
employees and supervisors. The questions become whether the nine jobs listed above constitute management or supervisor positions as defined by statute.

The Ohio Revised Code at R.C. Section 4117.01 (F) defines a supervisor as one who has the authority "to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment..." The statute, at section (L) goes on to describe management level employees to include those employees who formulate policy on behalf of the supervisor and who can reasonably direct the implication of such policy or who may reasonably be required to assist or conduct collective bargaining negotiations or have a major role in personnel administrations.

It is my understanding that the persons holding the jobs listed above lack the authority required under the revised code to be considered supervisors or managers as they lack the ability to hire, fire, lay off, discipline, or conduct negotiations, etc... All such rights were reserved exclusively to the City in Article 4 of the bargaining agreement. The positions covered by the bargaining agreement and the job duties of each position appear to be unchanged from date of issuance of the SERB Opinion 2005-002.

Please contact my office if you have any questions concerning this opinion.

Sincerely,



Joseph D. Kirby  
Attorney at Law

JDK/bec



### III. FINDINGS OF FACT<sup>2</sup>

1. The City of Jackson is a "public employer" as defined by § 4117.01(B). (S.)
2. The Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 is an "employee organization" as defined by § 4117.01(D) and is the SERB-certified exclusive representative for a bargaining unit of employees of the City of Jackson that includes all of the following: Executive Assistant of Administrative Services Water Distribution/Waste Water Collection, Mechanical Supervisor, Electric Superintendent, Waste Water Plant Supervisor, Street and Alley/Sanitation, and Utilities Superintendent. (S.)
3. A special audit that occurred in the City of Jackson in 2002 strained relations between the City Council and the administration of Mayor John T. Evans, including Public Service/Safety Director William Sheward, so as to render communications between City Council and the administration virtually non-existent. (T. 85-86, 230, 235-236)
4. On March 13, 2003, SERB certified OAPSE as the exclusive representative for the bargaining unit pursuant to a Request for Recognition. (S.)
5. OAPSE and the City's bargaining representatives met and negotiated an initial collective bargaining agreement ("CBA"). On or about August 8, 2003, the parties reached tentative agreement on the initial CBA. (S.; T. 8, 46-47)
6. On August 8, 2003, Public Service/Safety Director Sheward asked Executive Assistant Robin Bissell to prepare a memorandum to City Council for issuance under his name and that of Mayor Evans. The memorandum referred to the tentative agreement between OAPSE and the City, which was attached to the memorandum. The memorandum asked City Council to review the tentative agreement before its August 25, 2003 City Council meeting. The memorandum indicated that Mayor Evans and Mr. Sheward would be present at the meeting on August 25, 2003, to answer questions and indicated that an ordinance would be presented at that time. The memorandum further stated that if City Council needed information prior to August 25, 2003, either the Mayor or Mr. Sheward could be contacted. (Jt. Exh. 1; T. 10-13, 100)

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<sup>2</sup>All references to the transcript of the hearing are indicated parenthetically by "T.," followed by the page number(s). All references to the Stipulations of Fact are indicated parenthetically by "S." References to the Joint Exhibits in the record are indicated parenthetically by "Jt. Exh.," followed by the exhibit number(s). All references to the Complainant and Intervenor's exhibits in the record are indicated parenthetically by "C - I Exh.," followed by the exhibit number(s). References to the transcript and exhibits in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for the related Finding of Fact.

#### IV. ANALYSIS AND DISCUSSION

Section 4117.11 provides in relevant part as follows:

- (A) It is an unfair labor practice for a public employer, its agents, or representatives to:
  - (1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code\*\*\*;
  - \*\*\*
  - (5) Refuse to bargain collectively with the representative of its employees recognized as the exclusive representative \*\*\* pursuant to Chapter 4117. of the Revised Code[.]

The issue is whether the City engaged in bad-faith bargaining in violation of §§ 4117.11(A)(1) and (A)(5) when it failed to recognize the parties' collective bargaining agreement. Good-faith bargaining is determined by the totality of the circumstances. In re Dist 1199/HCSSU/SEIU, SERB 96-004 (4-8-96). A circumvention of the duty to bargain, regardless of subjective good faith, is unlawful. In re Mayfield City School Dist Bd of Ed, SERB 89-033 (12-20-89).

Section 4117.10(B) provides in relevant part as follows:

The public employer shall submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified, but if the appropriate legislative body is not in session at the time, then within fourteen days after it convenes. The legislative body must approve or reject the submission as a whole, and the submission is deemed approved if the legislative body fails to act within thirty days after the public employer submits the agreement. The parties may specify that those provisions of the agreement not requiring action by a legislative body are effective and operative in accordance with the terms of the agreement, provided there has been compliance with division (C) of this section. If the legislative body rejects the submission of the public employer, either party may reopen all or part of the entire agreement.

Section 4117.10(B) requires an employer to submit "a request for funds necessary to implement an agreement" within fourteen days of the date the parties finalize the agreement. Since it is undisputed that the parties reached tentative agreement on August 8, 2003, this section required the public employer to submit "a request for funds" to the legislative body by August 22, 2003. The City states that the request for funds was made on August 25, 2003, when it argues that the tentative agreement was submitted for

the first time to City Council along with an ordinance. Section 4117.10(B) also states that the submission shall be deemed approved if the legislative body fails to act within thirty days after the public employer submits "the agreement." The first inconsistency within § 4117.10(B) is the reference in the first sentence to "a request for funds" and in the second sentence to "the agreement" when referring to the submission.

The question of what constitutes a proper submission is not specifically answered by SERB case law. OAG Opinion 88-030, however, provides a useful analogy. The opinion discusses what procedures are sufficient to produce a proper submission to the General Assembly when a public employer submits a request for funds necessary to implement a collective bargaining agreement to the General Assembly. The opinion notes that § 4117.10(B) imposes a duty upon a public employer to make a submission for approval or rejection but specifies only the time within which such a submission must be made. The opinion cites Jewett v. Valley Ry. Co., 34 Ohio St. 601 (1878), and State ex rel. Hunt v. Hildebrandt, 93 Ohio St. 1, 112 N.E. 138 (1915), in concluding that "in the absence of statutory guidelines as to the manner in which the submission is to be made, it is presumed that the legislature intended that the submission be made in any reasonable manner."

It does not seem unreasonable for Mayor Evans and Public Service/Safety Director to draft a memorandum, attach a copy of the tentative agreement thereto, and give the memorandum and attachment to their Executive Assistant to give to City Council. It also does not seem unreasonable for the Executive Assistant to give the memorandum and tentative agreement to the Law Director when he offers to take it over to City Council for its next meeting. In the absence of any case law to the contrary, the question of whether the submission of the tentative agreement without an ordinance is sufficient to cause the thirty-day clock to start ticking must be answered in the affirmative.

The City argues that Ms. Bissell's version of what transpired between herself and Law Director Detty on August 8, 2003, should not be believed. The City argues that Ms. Bissell's credibility in this regard is suspect in that she stood to gain economically by implementation of the tentative agreement. But by the same token, it stands to reason that the already fiscally strapped City would be negatively impacted by implementation of the tentative agreement. Is the testimony of Council members and current city administration to be disbelieved as well? The City's argument, absent more, is not a legitimate basis upon which to discount Ms. Bissell's testimony.

The City further argues that the memorandum alone was submitted to City Council for its August 11, 2003 meeting. The City argues that it is clear from the testimony of members of City Council that they received only the memorandum and no attached tentative agreement at the August 11, 2003 City Council meeting. The actual testimony of Council members, however, was in conflict. Councilman Heath testified that he received both the memorandum and the tentative agreement. Councilmen Hodge and Goodman testified they received the memorandum but not the tentative agreement. Councilman Brown testified that he received neither.

What is most telling in this case is the letter signed by Law Director Detty stating that he provided the memorandum and the tentative agreement to City Council before their August 11, 2003 meeting. Although Mr. Detty now claims absolutely no memory of anything related to his actions in this regard, he does admit that his signature is affixed to the letter. It is more reasonable to conclude that this letter contains what actually occurred than to speculate as to another version of events based solely upon Law Director Detty's current memory lapse. Whether he put the documents in the City Council packets on August 8, 2003, or between August 8, 2003 and August 11, 2003, Mr. Detty's letter is clear that both the memorandum and tentative agreement were in the hands of City Council members at the August 11, 2003 City Council meeting.

The parties reached tentative agreement on August 8, 2003. By a preponderance of the evidence, the record supports, that at City Council's August 11, 2003 meeting, City Council members had before them a copy of the tentative agreement and of the memorandum from Mayor Evans and Public Service/Safety Director Sheward. The memorandum stated that an ordinance would be presented at the August 25, 2003 City Council meeting and that Mayor Evans and Mr. Sheward would be present then to discuss the terms of the tentative agreement. Any questions in the interim could be directed to Mayor Evans or Mr. Sheward. City Council met on August 11, 2003. The tentative agreement was not discussed. An ordinance was submitted to City Council on August 25, 2003, authorizing the City to enter into an agreement with OAPSE. City Council gave the ordinance its first reading on August 25, 2003, a second reading on September 8, 2003, and a third reading on September 22, 2003.

Under § 4117.10(B), City Council had thirty days from August 11, 2003, to either approve or reject the tentative agreement. City Council rejected the tentative agreement on September 22, 2003. By failing to take action to approve or reject the City's submission within the thirty-day time limit, City Council allowed the tentative agreement to become the parties' collective bargaining agreement by operation of law. In re East Palestine City School Dist Bd of Ed, SERB 86-011 (3-20-86), at 247. Thus, the City has committed an unfair labor practice in violation of §§ 4117.11(A)(1) and (A)(5) by failing to recognize the parties' collective bargaining agreement.

#### V. CONCLUSIONS OF LAW

Based upon the entire record herein, this Administrative Law Judge recommends the following Conclusions of Law:

1. The City of Jackson is a "public employer" as defined by § 4117.01(B).
2. The Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 is an "employee organization" as defined by § 4117.01(D).



3. The City of Jackson violated §§ 4117.11(A)(1) and (A)(5) by failing to recognize the parties' CBA.

#### **VI. RECOMMENDATIONS**

Based upon the foregoing, the following is respectfully recommended that:

1. The State Employment Relations Board adopt the Findings of Fact and Conclusions of Law set forth above.
2. The State Employment Relations Board issue an **ORDER**, pursuant § 4117.12(B), requiring the City of Jackson to do the following:

**A. CEASE AND DESIST FROM:**

- (1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by failing to recognize the parties' Collective Bargaining Agreement, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1); and
- (2) Refusing to bargain collectively with the exclusive representative of its employees by failing to recognize the parties' Collective Bargaining Agreement, and from otherwise violating Ohio Revised Code Section 4117.11(A)(5).

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:**

- (1) Recognize the Collective Bargaining Agreement between the Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 and the City of Jackson.
- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 work, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Jackson shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (3) Notify the State Employment Relations Board in writing within twenty calendar days from the date the **ORDER** becomes final of the steps that have been taken to comply therewith.