STATE EMPLOYMENT RELATIONS BOARD

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

FACT-FINDING PROCEEDINGS
CASE NO. 01 MED 12-1125

DANIEL N. KOSANOVICH
FACT-FINDER

IN THE MATTER OF	:
	:
AMERICAN FEDERATION OF STATE, COUNTY, MUNICIPAL EMPLOYEES, OHIO COUNCIL 8, LOCAL 101, DAYTON PUBLIC SERVICE UNION, AFL-CIO	:
Employee Organization	:
	:
and	:
	:
CITY OF FAIRBORN, OHIO	:
Public Employer	:

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER
ISSUED: NOVEMBER 22, 2002

Appearances:

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REPORT AND RECOMMENDATIONS

I. Background and Procedural History

The City of Fairborn is located in Montgomery County, Ohio and has a population of approximately 32,000 people. There are four (4) separate bargaining units in the City. It has had a collective bargaining relationship with the Union since the early 1980s.

The bargaining unit in question consists of approximately 46 employees. The bargaining unit classifications are: Meter Reader, Maintainer, Shop Clerk, Water Meter Service Worker, Equipment Body Repairer, Sewer Line Specialist, Heavy Equipment Operator, Cemetery Sexton, Maintenance Crew Leader, Pump Station Repairer, Treatment Plant Operator II, Building & Mechanical Specialist, and Equipment Mechanic, and excluding all other employees of the City.

The most recent collective bargaining agreement was effective on April 10, 1999 and expired, by its terms, on April 5, 2002. The parties met and negotiated on March 27, 2002, April 2, 2002, April 29, 2002, May 1, 2002 and May 14, 2002. In addition, the parties met in mediation sessions on June 19, 2002, July 8, 2002, August 23, 2002, September 13, 2002, September 16, 2002 and September 17, 2002.

In compliance with Ohio Revised Code Section 4117.14 (C)(3) the State Employment Relations Board appointed the undersigned to serve as the fact-finder in connection with this matter. As required by law, the fact-finder's report was originally due on March 20, 2002. However, the parties extended the due date for the fact-finder's report until November 25, 2002.

Along with the uncontested provisions of the predecessor contract, during the course of the negotiations and their mediated sessions the parties agreed upon the following issues: Article 8 Promotions and Job Postings; Article 12 Grievance Procedure; Article 14 Wages (Longevity Pay); Article 15 Holidays; Article 16 Vacation; Article 20 (Increase of Waiver Per Month only); Article 24 Tool Allowance; Article 28 Sick Leave; Article 29 Clothing; Article 32 Duration of Contract and Addendum 2 Benefits. The issues presented for fact-finding included: Article 4 Fair Share; Article 14 Wages; and Article 20 Health Insurance.

II. Criteria

In compliance with Ohio Revised Code Section 4117.14 (G)(7) and the Ohio Administrative Code 4117-9-05(J), the fact-finder considered the following criteria in making the recommendations contained in this report:

1. Past collectively bargained agreements between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining units 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 finance and administer the issues proposed, and the affect of the adjustments on normal standard of public service.
4. The lawful authority of the public employer;
5. Stipulations of the parties; and
6. Such factors not confined to those listed above, which are normally or traditionally taken into consideration.

III. Findings and Recommendations

It must be noted for the record that the parties were given every opportunity to present their respective positions. The representatives of the parties took advantage of the opportunities and provided the undersigned professional presentations of their respective positions in the fact-finding hearing. Their presentations were direct and to the point. The comparisons offered were both reasonable and consistent. For the type of effort displayed at the hearing they are to be commended.

Article 4 Recognition—Union Security and Union Dues

Union's Position (Fair Share Fee)

The Union proposes a change in the current collective bargaining agreement language. AFSCME seeks the inclusion of a fair share fee provision in the contract.

As support for its position the Union points out that "all bargaining unit members whether Union members or not receive the benefits of the collective bargaining agreement." (Union's Pre-hearing Statement page 4) Moreover, because the Union is the sole and exclusive bargaining representative of the bargaining unit, it has a concomitant duty of fair representation to all bargaining unit members. In order to competently represent the bargaining members and meet its duty of fair representation, financial support is required. "AFSCME and Local 101, DPSU regularly incurs expenses for rent, utilities, salaries, training, arbitration and fact-finding." (Union's Pre-hearing Statement page 5) Everyone should shoulder their fair share of those expenses.

Also, the Union points out that currently 75% of the employees in the bargaining unit are members. This demonstrates the employees' desire to support the Union and it warrants the fair share fee provision's inclusion in the collective bargaining agreement.

In addition, the Union argues that no one should be able to reap the benefits of Union representation without accepting the responsibility to pay for it.

The Union anticipates that the City will advance the argument that City Council is philosophically opposed the fair share fee provision proposed. However, the Union notes that the City has, in the past solicited financial support and other in kind services from the Union in supporting levy renewals. It is inappropriate for the City to argue it is philosophical opposed to fair share, while at the same time soliciting Union support for levies.

City's Position

It is the City's position that the issue of fair share fee should be left to the parties for resolution. Indeed, in the past, fact finders and conciliators have resisted the temptation to award a fair share fee provision in dealing with the issue.

The City is philosophically opposed to the inclusion of a fair share fee provision in the collective bargaining agreement. First of all, the City competes with other cities located in the Greater Miami Valley area for labor and roughly 50% of those communities do not have a fair share fee provision with AFSCME bargaining units.[1] Thus, to include a fair share fee provision places the City of Fairborn at a disadvantage. In addition, none of the other bargaining units in the City have a fair share fee provision in their collective bargaining agreements. Finally, there are 46 bargaining unit positions authorized and 33 bargaining unit members who pay union dues by way of payroll deduction. Thus, 71.7% of the bargaining unit pays union dues through payroll deduction.[2] The City urges that only when the compliment of bargaining unit members paying union dues through payroll deduction reaches the 90% plateau, would the fair share fee provision be justified.

Recommendation

It is recommended that the parties adopt the language pertaining to fair share fee as proposed by the Union for inclusion in their new collective bargaining agreement. The Union is statutorily obligated to represent all persons within the bargaining unit. It stands to reason with the demonstrated support illuminated below that all beneficiaries of the representation provided by the bargaining representative should bear some financial responsibility to support its efforts.

The Union's evidence supports the conclusion that 75% of the bargaining unit memmbers pay union dues via payroll deduction or, more significantly, are union members. Moreover, the record indicates that this level of support for the Union (or some percentage close to it) has been maintained for a substantial period of time. This evidence indicates that the Union has taken root and has developed a

[1] The parties disagree on the exact percentage of cities in the Greater Miami Valley, with whom Fairborn competes with for labor, that have fair share fee provisions. However, the difference is not significant.
[2] The Union points out that there are 2 vacancies in the bargaining unit. The total number of bargaining unit slots filled is 44. Thus, it is more accurate to say that 75% of the bargaining unit pays union dues through payroll deduction.

solid foundation among bargaining unit members. It is a healthy situation to maximize membership participation and to encourage the expression of divergent views in a representational organization. It is also a healthy situation to have the organization operated by a majority of employees involved rather than vocal minority. When everyone has to pay for a service, supporters and critics alike demand that the service be responsive to the needs of all. When bargaining unit members, who are likely to manifest divergent philosophical views, are financially contributing to its existence, it is far more likely that they will take part in the administration of the Union. Furthermore, under these circumstances, the Employer would have more assurance that as Union concerns are raised they more accurately reflect the majority view of the unit.

In addition, the comparables offered in this case demonstrate that 57% of the entities in the Greater Miami Valley with which the City of Fairborn is compared have fair share fee provisions in their contracts. This fact suggests that it is not outside of the norm to have fair share fee provisions included in the collective bargaining agreements.

The City argues that it is philosophically opposed to the inclusion of a fair share fee provision in the collective bargaining agreement. The Employer points out that one "federal mediator" suggested that the inclusion of a fair share fee provision is appropriate when the bargaining membership support is at 90% or above. However, the record is devoid of any direct evidence to support a finding that it is necessary to reach that threshold before recommending a fair share fee provision in the contract.

With respect to the comparables, the City argues that it must compete directly in the labor market with the other entities in the Greater Miami Valley area intimating that a fair share fee provision will place the City of Fairborn at a disadvantage in recruitment. Beyond this bald assertion there is little, if anything, on the record to draw the causal connection between difficulties in recruitment and the inclusion of a fair share fee provision in the collective bargaining agreement.

The reality is that on balance the Union's arguments are more persuasive than those offered by the City. The Union is a representational organization—an agent if you will. The Union has the responsibility to serve the bargaining members fairly and to the best of its ability. To do so the effort must receive financial support for those involved. With three-quarters (3/4s) of the bargaining unit members demonstrating long standing financial support for the Union, it is appropriate to require other bargaining unit members to pay their fair share for the services rendered. Moreover, fair share fee provisions can be found in more than half of the contracts involving cities comparable to the City of Fairborn.

ARTICLE XIV—Wages

Union's Position

The Union's position on the outstanding wage dispute is relatively simple and straightforward. The Union is seeking an across the board wage increase of 3.0% in the first year of the agreement; a 3.5% wage increase in the second year of the new collective bargaining agreement; and, finally, a 3.0% wage increase in the last year of the contract. The Union proposes April 10, 2002 as the effective date for the initial increase.

It is the Union's view that the wage increases proposed are very modest and are tied to the Union's insurance proposal.

By way of comparison, the Union points to other communities similarly situated and argues that those communities have given their employees wage increases in excess of those proposed here and those other bargaining units don't have to make contributions to their insurance coverage premiums. (See, City of Kettering; City of Oakwood; and the City of Moraine). Moreover, the City of Fairborn is below average in the wages paid to its employees, when compared to other cities.

City's Position

The City is offering a 3.0% across the board wage increase for all bargaining unit members in each of the three years of the proposed agreement. However, it must be noted that the City is seeking to make the first year's wage increase effective upon ratification of the new collective bargaining agreement.[3]

The City argues that it is a "financially stressed situation" and that it must be fiscally conservative. Therefore, the City submits that 3.0% across the board is all that it can offer.

The City's primary fund is its general fund. Budget projections stand at $17,500,000, with a $500,000.00 shortfall. The City is also projecting a "draw down" of $500,000.00 from the tax fund to supplement the general fund.

In addition, the City points out that its low revenue base is likely to continue in the foreseeable future. Property taxes are the major form of revenue generated for the general fund.[4]

[3] This proposal differs from the final proposal offered by the City and rejected by the bargaining unit, ostensibly, because, the City alleges, that its financial picture has worsened since the inception of the bargaining.
[4] In 1996 an income tax levy was defeated and in 1997 a street levy was voted down.

The City notes that non-represented employees will have to suffer through a six (6) month wage freeze (notwithstanding the increase that they received in January of 2002). Moreover, every seventh or eighth year the City is obligated to pay its employees a 27th paycheck, which significantly impacts the City's financial condition.

The City also submits that little, if any, capital improvements are budgeted for the upcoming year in an effort to be fiscally conservative. Furthermore, the citizens are crying out for road improvements and the City administration must be responsive. Finally, the City notes that it must consider replacing the fire station.

Added to the mix are ever increasing health care costs. The City simply must get a handle on these costs and all other expenditures.

Recommendation

The fact-finder recommends that the Union's proposal regarding across the board wage increases be adopted by the parties. It is both modest and appropriate. Moreover, it does not serve to unduly burden the City's financial condition. Additionally, it serves to maintain the employees' position (which is conceded to be below average) on the comparable wage scale with other similarly situated communities.

There may be a heightened sense of urgency associated with the City's "financially stressed situation." However, the decisions that the City faces today are resource allocation decisions that all communities face.

The City indicated to the fact-finder during the course of the hearing that the .5% difference between the parties' respective proposals would cost the City approximately $9,000.00. When looking at comparables, the City's proposed minimum wage for a laborer is 12.5% below average and 7.0% below average for the maximum wage. The minimum wage proposed for the water treatment plant operator I is 15.5% below average and the maximum wage proposed is 5.3% below average. The minimum wage proposed for the WRC operator I is 15.5% below average and the maximum wage proposed is 5.3% below average. For the mechanic classification, the minimum wage proposed is 9.8% below average and the maximum wage proposed is .2% above average. Finally, the minimum wage proposed by the City for the classification of heavy equipment operator is 12.3% below average and the maximum wage proposed is 4.1% below average.

As noted above, the Union's request is both modest and appropriate. The proposal's financial impact is minimal and it doesn't dramatically alter the landscape. The Union's wage proposal does not serve to vault the bargaining unit employees into the forefront of employees in comparable bargaining units. It serves only to maintain their position with respect to others.

The fact-finder must note that he is somewhat troubled by the City's proposal to make the wage increases effective upon the ratification of the collective bargaining agreement.[5] Given the need to contain health care costs and the need to alter the approach to health care insurance, it seems unfair to ask the bargaining unit employees to accept an additional financial impact by freezing wages for six (6) months. Particularly, in light of the fact that the non-represented employees have enjoyed a wage increase since January of 2002. Therefore, the undersigned in recommending that the effective date of the wage increases be on April 10, 2002.

Article 20—Health Insurance

In today's world containing skyrocketing health care costs is extremely important. Increases in health care premiums of 15% to 20% are common.[6] This thorny issue has emerged in this case.

By way of background, the City has maintained a point of service plan (which the parties refer to as a POS Plan) which provides rich benefits for the covered employees and requires minimal out of pocket expenditures. When the City shifted coverage to an 80/20 plan (which the parties refer to as the "Base Plan") for the non-represented employees and for new hires in the bargaining unit, the insurance provider indicated that it would no longer underwrite the POS Plan for new employees of the bargaining unit. However, those bargaining unit members who chose to do so, had their POS Plan choice grandfathered.

The City seeks to eliminate the POS Plan and provide a 90/10 Plan for all bargaining unit employees in an effort to "be fair" the employees and to "reduce costs." The Union seeks to maintain the status quo with respect to health care or, in the alternative, receive the same insurance coverage provided to the safety forces.

Employer's Position

The City has a desire to gain as much control over health care costs as possible given its "financially stressed" situation, as set forth in the wage discussion above. The City also seeks to implement systemic changes to accomplish its objective. Originally, the City contemplated moving all City workers to the "Base Plan", thereby, saving approximately $200.00 per family per month in insurance premiums. However, in an effort to be fair to its employees the City sought out and is prepared to offer a 90/10 Plan, which provides lesser savings than the base plan, but is substantially less expensive than the POS Plan.

The 90/10 requires a greater contribution on behalf of the grandfathered employees. The benefits levels are different from the POS Plan, but not substantially so.

[5] This proposal first came to light at the fact-finding hearing.
[6] The City contends that the POS Plan rates have increased 54% over the past 3 years.

The health insurance options currently in effect will remain in effect until the renewal date of March 1, 2003.

Union's Position

The Union seeks to maintain the POS Plan for bargaining unit employees or, in the alternative, to be included in the safety forces insurance plan. The Union submits that the City can afford either of the proposals. Moreover, the Union argues that the health insurance issue is tied directly to the wage proposal, which the Union reminds the undersigned it quite modest.

The Union also notes that a mid-range health insurance plan which was more favorable than the 90/10 Plan the City is now offering was rejected as part of the final offer voted on by the bargaining unit earlier this year. Thus, the conclusion is that the 90/10 is not a viable alternative.

Recommendation

Given the financial condition of the City and the skyrocketing health costs, it is the fact-finder's recommendation that the City's proposed 90/10 Plan be adopted and offered to all bargaining unit employees.

The record indicates that in the past three (3) years the City has realized a 54% increase in health insurance premiums in its POS Plan and a 40% increase in the premiums associated with its Base Plan (80/20). The City is projecting another 15% increase in premiums in the upcoming year.

The premium, as of March 3, 2002, for a single person on the POS Plan is $279.22. There are currently 2 single persons enrolled in the single coverage option under the POS Plan.

As of March 3, 2002, the premium for family coverage under the POS Plan is $782.91. Currently, there are 29 bargaining unit members who have opted for the family coverage.

The premium cost for a person electing single coverage under the Base Plan (80/20) is $217.98.[7] Currently, there are 4 such enrollees.

The premium for persons electing family coverage under the Base Plan is $611.21 and there are 11 bargaining unit members who have elected family coverage. It is significant to note that 35% of the bargaining unit members who

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[7] The Base Plan is the only plan offered to bargaining unit members since the change was made and the POS Plan was grandfathered. The insurance carrier will no longer underwrite the POS Plan for new employees.

are covered by the health insurance offered by the City of Fairborn are required to participate in the Base Plan (80/20).

The premium for family coverage under the City's 90/10 Plan is $716.61. For single coverage the premium is $255.57. These premiums are in excess of 8% lower than the premiums associated with the POS Plan.

A comparison of the various plans demonstrates that the 90/10 is better than the Base Plan (80/20), but not quite as good as the POS Plan. For instance:

POS Plan

Network	Out of Network
Deductibles	*Deductibles*
Single $0 Family $0	Single $300.00 Family $600.00

90/10 Plan

Network	Out of Network
Deductibles	*Deductibles*
Single $0 Family $0	Single $500.0 Family $1000.00

Base Plan (80/20)

Network	Out of Network
Deductibles	*Deductibles*
Single $200.00 Family $400.00	Single $400.00 Family $800.00

POS Plan

Network	Out of Network
Co-insurance 100% (most services)	*Co-insurance* 70%/30% (most services)

90/10 Plan

Network	Out of Network
Co-insurance	*Co-insurance*
90%/10% (most services)	70%/30% (most services)

Base Plan

Network	Out of Network
Co-insurance	*Co-insurance*
80%/20% (most services)	60%/40% (most services)

POS Plan

Network	Out of Network
Out of Pocket	*Out of Pocket*
Single $1000.00 Family $2000.00	Single $3000.00 Family $ 6000.00

90/10 Plan

Network	Out of Network
Out of Pocket	*Out of Pocket*
Single $1000.00 Family $2000.00	Single $3000.00 Family $6000.00

Base Plan

Network	Out of Network
Out of Pocket	*Out of Pocket*
Single $2000.00 Family $4000.00	$4000.00 $8000.00

In a more financially secure environment the undersigned would have little difficulty recommending the continuation of the POS Plan. However, the reality is that the City must gain some constrains on health insurance costs. It proposes to accomplish this task through systemic changes. The City also has an interest in maintaining an acceptable relationship with the bargaining unit members.

The Union is interested in securing the best health care coverage for its membership as is possible.

There is a segment of the bargaining unit that has an interest in improving their position with respect to health care insurance costs. Those on the Base Plan (80/20) would realize an improvement in health care insurance costs and benefits under the 90/10 Plan.

On balance, adopting the Employer's 90/10 and offering it to all of the employees who are members of the bargaining unit meets most of the needs referenced above. The Employer attains the systemic change it needs to gain control of health insurance costs. The City also realizes some cost savings. The Union maximizes health insurance coverage for the bargaining unit and minimizes the out of pocket expense for its members, given the financially stressed economic environment that exists. In addition, the employees currently under the Base Plan (80/20) gain some relief from health care costs.

Moreover, the renewal date for insurance coverage is March 3, 2003. The Employer's proposal would not go into effect until that date. Thus, the bargaining unit members have gained an additional year of POS Plan coverage because of the length of the negotiations (2002).

For these reasons the undersigned recommends that the City's 90/10 Plan with the 15% employee contribution be adopted for all bargaining unit employees as a provision of the new contract.

Respectfully submitted,

Daniel N. Kosanovich
Fact-Finder
November 22, 2002