

STATE EMPLOYMENT  
RELATIONS BOARD

2002 SEP 10 A 10: 26

IN THE MATTER

OF

FACTFINDING

BETWEEN

CITY OF WAPAKONETA, OHIO

AND

UTILITY WORKERS UNION OF AMERICA, LOCAL 565,  
AFL-CIO

Date of Hearing: August 29, 2002  
Location: City of Wapakoneta Administrative Offices  
Case No.: 02-MED-05-0546  
Date of Award: September 9, 2002

Union Representative:

Donald P. Opatka  
Director, Region III UWUA  
7559 Anchor Lane  
Northfield, Ohio 44067

Employer Representative:

Patrick Hire  
Senior Consultant  
Clemans, Nelson & Associates, Inc.  
417 North West Street  
Lima, Ohio 45801

**OPINION AND AWARD**

Michael Paolucci  
Arbitrator

### Administration

By letter dated June 27, 2002, from both Parties, and as confirmed by letter dated July 1, 2002 from Dale A. Zimmer, the Administrator with the Bureau of Mediation at the State Employment Relations Board (SERB), the undersigned was informed of his designation to serve as Factfinder in a procedure mandated by R.C. 4117.01, et seq. On August, 29, 2002, a hearing went forward after a short attempt at mediation. At the hearing the Parties presented testimony and documentary evidence in support of positions taken. The record was closed upon the submission of final arguments and the matter is now ready for final recommendations by the undersigned.

### Factual Background

The Employer is located in Northwest Ohio; the Union represents approximately forty one (41) employees, including clerical, engineering, meter reading, laborer and maintenance workers, among others.

Prior to the beginning of the hearing, mediation was attempted by the factfinder, but was unsuccessful. The Parties have traditionally used the cities of St. Mary, Celina, Kenton, and Van Wert, as its outside comparables. In addition to these historical comparisons, the Union also used nine (9) other municipalities, including some that border major industrial cities such as West Carrollton which is close to Dayton. The City's comparables, it asserted, were more similarly situated in terms of number of employees; jobs in the area; workforce; and financial condition. The Union agreed with this assessment, but contended that the other comparables were also relevant to provide evidence of how these employees fare as compared to other similar municipalities. The City disagreed with the Union's comparables as being larger, more industrialized, and containing a higher

population.

Also pertinent is the City's financial condition. Although the City did not make an argument based on its ability to pay costs, it did make the assertion that its future financial condition was a serious concern. It provided evidence that it has made excellent financial planning decisions that have left it in good financial condition despite its otherwise dismal income stream. It argued, as a general factor to be considered for all of the issues, that its financial future is unstable. It pointed out that it has lost revenue sources due to lost manufacturing and other jobs; due to lost population; and due to EPA mandates that will require it to spend a large amount of money (approximately fifteen million (\$15,000,000.00)) on both wastewater treatment and landfill cleanup. The cleanups as ordered by the EPA include the closing of a landfill; taking groundwater cleanup measures; and improving all of the water treatment facilities.

The Union did not necessarily disagree with the City's claims, but argued that it is no different than other similarly situated municipalities that still offer better benefits. Moreover, it argued that its positions were reasonable; that its positions considered the City's unpredictable financial situation; and that its positions do not otherwise place an unreasonable financial burden on the City. It was agreed that the City still has to bargain with other internal bargaining units, including the police which is going to immediately follow the conclusion of these negotiations.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

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

- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment. (emphasis added)

Each issue will be addressed giving consideration to all of the statutorily mandated factors.

#### Resolved Issues

Prior to the hearing, the Parties were able to reach tentative agreement on numerous issues. These agreed to issues are incorporated herein, and made a part hereof by reference. The agreed to issues are attached hereto as Exhibit A and were previously marked by both Parties.

#### Unresolved Issues presented

The following five issues were presented for recommendation:

1. Article 20 - Standby Duty Pay, Section 20.2
2. Article 31 - Holidays
3. Article 34 - Group Hospitalization and Medical Coverage
4. Article 35 - Wages, Section 35.1
5. Article 51 - Duration

At the hearing the fifth (5<sup>th</sup>) issue, on duration was agreed to. It is attached hereto as Exhibit B and

is made a part hereof. The Parties essentially agreed to make the Agreement effective from August 1, 2002 until July 31, 2005. The remaining issues are addressed giving consideration to all of the necessary statutorily mandated factors.

### Contentions of the Parties

The following issues were presented at the hearing:

**1. Article 20 - Standby Duty Pay, Section 20.2**

The Union proposes an increase in the amount of \$1.00 per year for standby duty pay.

The City proposes keeping the *status quo* in the amount of \$13.00 per day worked on standby duty pay.

### Union Position

The Union argues that since affected employees are required to remain within fifteen (15) miles of the City, and since they are restricted in how they may act during the pertinent periods, then that time has value. It contends that the current rate of pay is too small.

The Union argues that the daily pay has remained relatively stagnate during the past contracts. As time goes on, it argues that the value of the pay decreases because of the cost of living increases that have not kept up with the daily rate. It asserts that in order to maintain the consistent value of the pay, the increase should be made. It asserts that its proposal is reasonable and sufficiently increases the pay to make its value consistent with the past benefit.

### City Position

The City argues that it recognized that these employees were falling behind in this benefit

and therefore it agreed during the last agreement to a \$1.00 per year increase in this benefit. It contends that this was a substantial increase and it maintains that another increase is not justified. It argues that there is no reason to increase the benefit any further since, because of the increases contained in the last Agreement, these employees are receiving a competitive rate.

### Recommendation

A review of the record reveals that a small increase is justified. Since the benefit is currently modest; since it offers the City a great benefit in exchange for the use of employee's personal time; and since it has changed little over the years; then a small increase is justified. Based on the foregoing a \$1.00 increase in the second (2<sup>nd</sup>) year of the Agreement, only, is reasonable. If the Parties had not already made increases during the last contract, a larger increase might be justified. However, since increases have already been made, then it is recommended that a \$1.00 increase be made in the second (2<sup>nd</sup>) year of the Agreement.

## **2. Article 31 - Holidays**

The Union proposes increasing the number of holidays from nine (9) to ten (10) with the tenth (10<sup>th</sup>) being a floating holiday based on each employees birthday.

The City proposes the *status quo*.

### Union Position

The Union relies on the external comparables which shows that the bargaining unit is behind all but St. Mary's. It argues that except for St. Mary's, with only eight (8) days, the remainder of the comparables have between twelve (12) and thirteen (13) holidays. It argues that since its proposal

makes the tenth (10<sup>th</sup>) holiday the birth date of each employee, then it actually benefits the employer since it would virtually never require overtime work.

### City Position

The City focuses on the cost that this proposal would result in based on the increase that will be necessary for all of its remaining employees. Since all of its employees receive the same amount of benefits, then whatever agreed to here would have to automatically be awarded to the other employees. It argues that providing this extra benefit would limit service to customers; would put a burden on other employees; and would result in significant immediate costs to the City.

### Recommendation

It is recommended that an additional holiday be granted. Since the Union's proposal would result in less cost to the City than a normal holiday, being based on the individual's birthday, it must be found as being less costly than it would traditionally be if another holiday were added. Since the other comparables have ten (10) or more holidays, and very often have as many as twelve (12) or thirteen (13), then an additional holiday is justified here. Moreover, the City's claims, while being relevant to other benefits, are found to be less persuasive for the holiday benefit. Therefore, it must be recommended that the Union's proposal be adopted with some modification. In the event that more than one (1) employee's birthday occurs on any particular day, the City must retain the right to order that the less senior employee take the holiday on a different, though closely falling day. Similarly, if the birthday falls on an otherwise inconvenient day, the City must be able to order the change of the date to a close, but more convenient date.

**3. Article 34 - Group Hospitalization and Medical Coverage**

The City proposes the *status quo* where it pays the first \$390/135 per month for employees who receive either family/single coverage, and then splits the remainder of the monthly premium on a 50/50 basis.

The Union proposes changing the City contribution for family coverage from \$390 to \$430 in the first year, \$460 in the second year, and \$490 in the third year. This would result in an increase of \$40/30/30 in each year of a three year contract.

Union Position

The Union argues that it is time to increase the premium contribution since it has not changed since its inception in 1989. It argues that many employees, especially those in the lower pay class, experienced a net loss in wages due to the increase in the health care premiums. Since those increase outpaced the wage increases in many cases, some employee are actually going backwards in their net wages. It argues that its proposal keeps the employees at 20% of premium costs whereas the *status quo* actually results in 28% of the premium costs. It asks that it be permitted to keep the split in premium costs more even and argues that its proposal does so.

City Position

The City argues that the Parties agreed to a reasonable split in premiums with the City taking the full costs if the premium did not rise above \$390. It argues that the employees did not complain during the first ten (10) years of the benefit when it did not have to pay anything. Since its problem did not begin until the premiums rose above the \$390 rate (which occurred for the first time in 1989),

then it asks that the employees not be permitted to change the benefit now just because of their “buyers remorse.” It contends that the City has turned over the decision making on which health care benefits to purchase to the health care committee. That committee, consisting in part of some bargaining unit members, has consistently chosen the “cadillac” plans that cost more than other plans with fewer benefits. Since it has no control of the benefits chosen, it argues that it should not have to contribute more to the monthly premium. If the Union wants more in the way of contribution, then it argues that the City should have more control over what plan is ultimately chosen. Without such control, it argues that it should not bear more of the financial burden. Moreover, as already pointed out, any benefits paid to these employees would have to be paid to other employees.

#### Recommendation

The City’s position is persuasive on many levels. It is correct in that its contribution is justifiably stagnate because of the lack of control; it is correct in that the costs that must be paid to other employees outside of this bargaining unit must be considered; and it is correct that these employees have benefitted greatly without having to contribute much until recently. Notwithstanding these positions, the comparables and the relatively small amount of increased costs as proposed by the Union make small changes justified. Indeed, the fact that the contribution has remained the same since 1989 makes small increases that much more justified.

Based on the foregoing, it is recommended that the \$390 be increased to \$400 in the first year, \$410 in the second year and \$420 in the third year. This should more readily make the employees comparable to other similarly situated employees.

4.

**Article 35 - Wages, Section 35.1**

Union Position

The Union proposes increases of 2%, 2.25% and 2.25% in each year of a three year contract. In addition to the other economic factors already addressed, including external comparables, the Union argues that its otherwise reasonable proposals are based on a total package. The Union underscores the fact that these employees are underpaid when compared to the externals.

City Position

The City proposes increases of 2%, 2%, and 2% in each year of a three year contract. The reasons for the modest increase are set forth above where economic conditions are discussed.

Recommendation

Having considered all of the foregoing, and since the economic factors have already been addressed, it is recommended that the wage increase be 2%, 2% and 2.25% per year.

September 9, 2002  
Cincinnati, Ohio

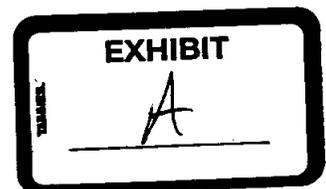


Michael Paolucci

**CITY OF WAPAKONETA  
UWUA, LOCAL 565  
UNCHANGED ARTICLES**

The parties hereto mutually agree the following articles as contained in the negotiated Agreement between the City of Wapakoneta and UWUA, Local 565 effective on August 1, 1999 until 12:00 midnight July 31, 2002 shall remain unchanged and be continued in their present form in the subsequent Agreement between the City of Wapakoneta and UWUA, Local 565:

Preamble/Purpose	Article 27-Unpaid Leave of Absence
Article 1-Recognition	Article 28-Jury Leave
Article 3-Union Business	Article 29-Military Leave
Article 4-Non-Discrimination	Article 30-Funeral Leave
Article 5-Management Rights	Article 33-Group Life Insurance
Article 6-Subjects of Bargaining	Article 36-Temporarily Working Out of Classification
Article 7-No Strike/No Lockout	
Article 8-Application of Civil Service Laws	Article 37-Payday
Article 10-Discipline	Article 39-Certification Incentive
Article 12-Labor-Management Meetings	Article 40-Educational Reimbursement
Article 13-Bulletin Boards	Article 41-Meals
Article 14-Probationary Periods	Article 42-Travel Reimbursement
Article 15- Seniority	Article 43-Travel Expenses
Article 17-Layoff and Recall	Article 44-Public Employees Retirement System
Article 19-Call-in Pay	
Article 21-Emergency Day Compensation	Article 45-Performance of Work by Supervisors
Article 22-Adverse Weather Conditions	
Article 23-Substance Abuse Testing, Counseling, and Assistance	Article 46-Subcontracting
Article 24-Safety	Article 47-Waiver In Emergency
Article 25-Safety Equipment	Article 48-Copies of Agreement



UNCHANGED ARTICLES -CONTINUED

Article 49-Commerical Driver's License

Article 50-Severability

FOR THE EMPLOYER:

*Rex A. Kattner*  
*R. Kattner*

DATE SUBMITTED: 7/17/02

DATE SIGNED: 7/17/02

FOR THE UNION:

*[Signature]*  
*Jeremy A. Hamel*  
*Brant J. Hamel*  
*Jeremy A. Hamel*  
*[Signature]*

**ARTICLE 20**  
**STANDBY DUTY PAY**

Section 20.1. Current Language.

~~Section 20.2. Current Language.~~

*20. RAIL  
P.A.*

Section 20.3. Current Language.

Section 20.4. Current Language.

Section 20.5. The standby duty pay, referred to in Section 20.2 above, shall be ~~excluded~~  
included in calculating an employee's overtime rate of pay for FLSA purposes.

FOR THE EMPLOYER:

*Luigi Katterbach*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_

DATE SUBMITTED: 7/17/02

DATE SIGNED: 7/17/02

FOR THE UNION:

*Gerry Stahl*  
\_\_\_\_\_  
*Gerry a. James*  
\_\_\_\_\_  
*Brant J. Hengel*  
\_\_\_\_\_

*Donald P. Gotta*  
\_\_\_\_\_

City of Wapakoneta  
and  
The UWA  
Tentative Agreement

The union agrees to withdraw the following proposals:

- Article 2 - Dues Deductions
- Article 9 - Grievance Procedure
- Article 16 - Vacancies and Bidding
- Article 18 - Hours of Work and overtime
- Article 32 - Vacation
- Article 38 - Longevity

The Employer agrees to withdraw the following proposals:

- Article 11 - Policy or Work Rule Changes
- Article 18 - Hours of Work and Overtime

The parties agree the above listed withdrawn proposals shall be considered to be tentatively agreed to remain unchanged as found in the current Collective Bargaining Agreement and included in the successor Agreement as such.

Furthermore, the parties tentatively agree to the following proposal:

Article 26 - Sick Leave/Injury Leave

Sections 26.1 - 26.5. Current language

Sections 26.8 - 26.13. Current language

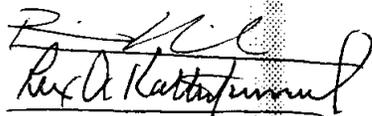
Section 26.6 - add the following language in the second sentence:

"prior document from the employee's physician <sup>by the Employer</sup> and/or in situations where the employee has been determined to be unable to return to work but capable of performing other activities not inconsistent with their illness or injury

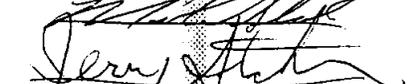
RAIL <sup>QD</sup>

Section 26.7. Strike out the word "written"; found before the word "approve".  
The parties agree to establish a Water Treatment Plant Mechanic position at pay range 6

For The Employer:

  
Rex A. Kattar

For The Union:

  
James A. Harty  
  
Brent J. Hensel  
  
Jerry Stetson  


Date Signed: 8/8/02

CITY OF WAPAKONETA  
FACT FINDING PROPOSAL

ARTICLE 51

DURATION OF AGREEMENT

**Section 51.1.** This Agreement shall be effective August 1, 1999 2002, unless otherwise specifically stated herein, and shall remain in full force and effect through twelve o'clock (12:00) midnight on July 31, 2002 2005, provided, however, it shall be renewed automatically on its termination date for another year in the form in which it has been written unless one party gives written notice as provided herein.

**Section 51.2.** Current Language.

**Section 51.3.** Current Language.

FOR THE EMPLOYER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE SUBMITTED: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

FOR THE UNION:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Sealed*

