

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

FACT-FINDING PROCEEDINGS
CASE NO. 02-MED-08-0670

2003 JAN 31 A 10: 25

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 :
 :
GREATER DAYTON REGIONAL :
TRANSIT AUTHORITY :
Public Employer :

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER
ISSUED: January 30, 2003

Appearances:

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REPORT AND RECOMMENDATIONS

I. Background and Procedural History

The bargaining unit involved in the relevant negotiations was certified on June 5, 2002. The certified bargaining unit consists of:

All employees in the following positions: Receptionist, Copy Center Clerk, Schedule Delivery Clerk, Research Coordinator, Scheduling Analyst, Data Collection Specialist, Audio Visuals Coordinator, Customer Service Representative, Part-time Customer Service Representative, Pass/Token Delivery Clerk, Accounts Payable Clerk, Accounts Receivable Clerk, Payroll Analyst, Financial Administrator 2, PMOB Administrative Coordinator, PMOB Scheduler, PMOB Reservationist, Para-Transit Trip Dispatcher, Lead Inventory Specialist, Inventory Specialist, Purchasing Clerk, Receiving Clerk, Procurement Specialist, Part-time Accounting Clerk, Maintenance Services Clerk, and Maintenance Coordinator.

The bargaining unit description excludes the following classifications of employees:

All management-level, supervisory, confidential, fiduciary, professional employees, interns, and students as defined in the Act; seasonal and casual employees as defined by SERB; and all employees in classifications represented by the Amalgamated Transit Union, Local 1385.

Bargaining was initiated by AFSCME and the parties met for the first time on September 18, 2002. Subsequently, the parties met and bargained on the following dates: October 2, 2002, October 10, 2002, October 23, 2002, October 25, 2002, October 30, 2002, November 6, 2002, November 8, 2002, November 14, 2002, November 22, 2002, and January 3, 2003.

On October 2, 2002 and 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 October 16, 2002. However, the parties extended the due date for the fact-finder's report until January 30, 2003.

As a result of the negotiations, the parties agreed to the following Articles, which are to be included in the labor contract once the collective bargaining process is completed and has produced a full agreement.

Article 1	Parties
Article 2	Management Rights
Article 4	Non-Discrimination
Article 5	Recognition
Article 6	Authorization and Fair Share

Article 7	Vacancies
Article 8	Seniority and Probation
Article 9	Personnel Records
Article 10	Subcontracting
Article 11	Modification
Article 12	No Strike or Lockout
Article 13	Labor Management Committee
Article 14	Union Business
Article 15	Printing of Contract
Article 16	Savings Clause
Article 17	Work Rules and Policies
Article 18	AFSCME/PEOPLE
Article 19	Layoff and Recall
Article 20	Safety
Article 22	Bulletin Boards
Article 24	Grievance and Arbitration Procedure
Article 25	Classification System
Article 26	Authority Passes
Article 27	Uniforms
Article 30	Employee Earned Time Off
Article 31	Military Leave
Article 33	FMLA
Article 35	Holidays
Article 36	ETO Buy Back.

The fact-finding hearing took place on January 9, 2003. At the outset of the hearing, the undersigned offered to mediate the remaining issues. The parties agreed to mediation.

The issues mediated included: Article 23, Discipline and Dismissal Procedure; Article 28, Insurance; Article 29, Hours of Work and Overtime; Article 32, Leave of Absence; Article 34, Extended Personal Illness (EPI); Article 37, Wages; and Article 40, Duration. The parties reached agreement on all of the issues, except for Wages and Insurance. Those issues were submitted to fact-finding.

All of the Articles upon which the parties reached agreement through their negotiations and those Articles successfully mediated to resolution are incorporated by reference into this Report.

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 and their respective representatives worked diligently through difficult issues in the mediation session. For the most part their efforts were rewarded. However, two thorny issues remained unresolved—wages and insurance.

The wage issue is presented with a backdrop of decreasing funds; some employees who have not received pay raises for several years and the negotiation of an initial contract between the parties. The insurance issue involves skyrocketing increases in premium costs over which neither the Employer nor the Union have control. To complicate matters further, the Employer's collective bargaining agreement with the ATU (a much larger unit) is set to expire in March of 2003.

The undersigned carefully considered the issues and attendant circumstances in reaching my recommendations. While neither the Employer nor the Union will be enthusiastic about those recommendations, they represent a workable solution to the matters at hand.

Article 28—Insurance¹

Employer's Position

The Employer's position with respect to insurance benefits is succinctly presented in its pre-hearing statement. To quote: "The areas of anticipated dispute in this very important Article center around four issues. First, given what is occurring in the world of healthcare insurance, the RTA does into believe that it should be locked in to a certain benefit level for the life of the contract. Second, for a number of reasons, including escalating costs of insurance, the quality of the existing benefit plan, etc., the RTA strongly believes that members of the

¹ Throughout the mediation and fact finding processes, the parties used the reference to "insurance" to refer to a number of items including health and dental insurance, life insurance, disability insurance, and a cafeteria plan of benefits. The fact finder shall attempt to be as specific as possible when referring to these various items in this Report.

bargaining unit should contribute for their insurance at a level of 20% of the monthly premium cost. Third, consistent with the ATU bargaining unit, the RTA does not believe that labor contracts should contain any reference to flexible benefits. Finally, only full-time employees are eligible for group term life insurance.”

Union’s Position

With respect to the premiums paid for health insurance the Union proposes that the Employer continue to pay the full cost of the premium for full-time employees for a period of one year. For part-time employees, the Union proposes a contribution by the Employer of \$204.67 supplemented by a contribution of \$87.72 by the employee for the first year of the contract. In addition, the Union is proposing a re-opener for years 2 and 3 of the contract with respect to insurance.

AFSCME also seeks to maintain the current level of benefits for the duration of the contract. According to the Union the ATU “agreement provides that the employer has the right to provide comparable benefits through an agency or company that is mutually agreeable to the Union. There is no reason for the AFSCME unit to receive a lesser benefit. Hence, AFSCME proposes the Favored Nations Clause found in Section 2.”

Regarding “Group Term Life Insurance” the Union proposes the continuation of the Cafeteria plan.

Recommendation

In connection with the health and dental insurance the fact finder makes the following recommendations. (1) For the first year of the collective bargaining agreement the Employer shall pay the full cost of the premium contribution for the full-time employees of the bargaining unit. (2) In the second and third years of the contract the bargaining unit employees shall contribute an amount equal to 10% of the premium cost for insurance coverage. (3) The part-time employees’ position with respect to insurance premium contributions that exists as of the date of this report shall remain unchanged for the first year of the contract. (For instance, if the part-time employees are now contributing to the premium cost at the level of 5% of the total premium, that equation shall remain in effect.) However, in the 2nd and 3rd years of the contract, the part-time employees shall contribute 10% of the premium cost for health insurance. (4) The level of benefits shall remain comparable to those currently in existence for the 3-year duration of the labor agreement.

The rationale for maintaining the status quo for the first year of the labor agreement is relatively simple. The renewal year occurs in the fall. Insurance premiums have already been established and the Employer has both budgeted for the payment of those premiums and, indeed, paid them. Moreover, the parties

have tentatively agreed that the effective date of the contract will be retroactive to December 3, 2002. Its duration is three (3) years. Thus, it will expire in December of 2005. The parties are already well into the first year of the agreement assuming this Report is adopted. The information received at the hearing indicates that the renewal process begins some five (5) months before the renewal date. In other words, the renewal process will begin very soon. It simply makes no sense to disturb the status quo at this juncture.

The Union proposed that the fact finder recommend a re-opener clause for insurance in the second and third years of the agreement. While re-opener clauses have value in certain situations, that is not the case with respect to insurance in this matter.

In this time of skyrocketing health care costs full payment of the health insurance premium by the Employer is the exception rather than the rule. This conclusion is borne out by the exhibits submitted at the fact finding hearing which demonstrate that the total group health care insurance costs increased from \$4,594,046 in 2001-02 to \$5,244,404 in 2002-03. Additionally, the family coverage health care premium increased from \$757.99 to \$882.75 for the same period of time.

The SERB 2001 10th Annual Report on the Cost of Health Insurance in Ohio's Public Sector and the 2002 Kaiser Report on Employee Contributions for Premiums both indicate that employee contributions to the premiums have become the norm.

To adopt the Union's proposal for a re-opener clause is to forestall the inevitable. Requiring a percentage contribution by the employees in the second and third years of the contract is fair, reasonable and consistent with the manner in which the ATU bargaining unit treats insurance costs.

It is the intention of the fact-finding Report to maintain the status quo for part-time employees with respect to insurance premiums for the first year of the labor agreement. For the second and third year of the agreement they shall contribute at the same level as full-time employees. Membership in a bargaining brings with it certain undeniable benefits as well as certain financial responsibilities. It lends stability to the unit to share as equitably as practicable in each of those areas.

With respect to the level of benefits, the recommendation contained in this report is to maintain comparable benefits for the life of the agreement. The Employer opposed this concept at the hearing. However, it appears to be a viable solution in light of the entire insurance package recommended. Additionally, it adds stability to the relationship and serves to build a modicum of trust between the institutions of management and labor.

The bargaining unit members are being required by this Report to make a 10% contribution to the cost of health care premiums in the second and third years of

the agreement. Insurance carriers are now in the posture of quoting rates for a 1-year period. The Employer is free to move from carrier to carrier at the annual renewal. Thus, the only predictability with respect to health insurance that employees in the bargaining unit gain from the recommended resolution of this issue is the level of benefits they can expect to have for three years. The stability in the area of benefits is essential to the integrity of the collective bargaining agreement. Moreover, to allow the Employer carte blanche in this area would be to run afoul of the notion of collective bargaining.

The Union proposed that the Employer maintain the “cafeteria plan” and/or parts of the plan and include it in the collective bargaining agreement. The “cafeteria plan” is an ERISA plan (sometimes referred to as a “125 Plan”) that cannot be dissected for inclusion in the collective bargaining agreement. However, during the course of the mediation and fact finding the Employer and Union indicated that another “125 Plan” could be developed during the life of the collective bargaining agreement and/or develop provisions to deal with disability insurance and the ability to purchase additional life insurance.

Therefore, it is recommended that the parties develop contract provisions to provide bargaining unit employees with the disability benefit and an ability to purchase additional life insurance consistent with the current practice.

ARTICLE 37—Wages

Union’s Position

The Union proposed a base rate wage increase for each of the three- (3) years of the contract. In the first year of the contract, the Union is seeking a 4% base rate increase retroactive to the effective date of the collective bargaining agreement. In the second and third year of the contract the Union proposed a 5% increase each year.

In addition, the Union proposed a most favored nations clause for inclusion in the collective bargaining agreement, as well as a 35 cents per hour shift differential for second shift work and a 45 cents per hour shift differential for third shift work.

It is the Union’s position that “the Employer possesses the ability to fund the proposed wage increases and cannot meet its burden of proving the inability to fund its prospective obligations.”

City’s Position

It is the Employer’s position that it is in a financially stressed situation and unable to grant the bargaining unit employees a wage increase. Instead, the Employer proposes a wage freeze during the first year of the contract coupled with wage re-openers in years two and three of the agreement. According to the Employer, the

lion's share of its financial funding from sales tax, which has realized zero growth in the past two years and the pattern is projected to continue. In fact, the Employer projects an eight million-dollar deficit.

The Employer resists any attempt to include a most favored nation clause in the contract. Additionally, the Employer rejects the shift differentials proposed by the Union.

Recommendation

It is the fact finder's recommendation that a base wage freeze be effective for the first year of the contract, followed by a wage re-opener in the second and third years of the agreement. In lieu of a base rate increase for the first year of the contract, the fact finder recommends a one time bonus payment of \$350.00 to each full-time and regular part-time bargaining unit employee.

The fact finder rejects both the proposed most favored nations clause and the shift differential proposal suggested by the Union.

The Employer offered persuasive evidence that indicates those sales tax revenues for the past three years have demonstrated zero growth. As noted above, much of the revenue stream generated for the GDRTA is directly attributable to the sales tax revenue. Moreover, the projected growth is minimal for the next four- (4) years.²

Wages comprise a very large budgetary expenditure. Even assuming zero % increase in wages for employees for the years of 2003, 2004, and 2005 and a 2.75% increase in wages in 2006 and 2007, the projection yields about an 8 million dollar deficit for the GDRTA.

The recommended solution is the only viable solution. A wage freeze in the first year maintains the status quo and does not overload an already stressed financial status. Such a wage freeze avoids elevating the base rates and serves to eliminate the compounding impact of a base rate increase on overtime pay.

The wage re-opener provision recommended by the fact finder provides the parties with the opportunity to revisit the wage issue yearly with new information and budgetary projections. It is the very "stuff" collective bargaining is made of and adds to the integrity of the process in this situation.

Providing the one time bonus serves a number of purposes. For instance, as noted above, during the course of the mediation/fact finding session information was provided to the undersigned that some bargaining unit employees have not received wages increases for up to three (3) years. (It must also be remembered that the bargaining unit employees will be assuming 10% of the insurance

² The projection submitted at the hearing was sales tax growth of 3% for the next four- (4) years.

premium costs in the second and third years of the contract.) Even given the stressed financial status of the GDRTA it would be unfair for the employees to go up to six years without a wage increase, particularly when other employees (the ATU) have received a wage increase for this contract year. In addition, such a payment does not elevate base pay and avoids the compounding impact on overtime. Moreover, the payment of such a bonus encourages the bargaining unit employees to carefully consider the ratification of the recommended agreement, rather than summarily dismiss it. Finally, it must be noted that the GDRTA was able to allocate monies for increased legal costs, a labor relation consultant and for bonuses for staff members during this financially stressed period.³ There are approximately 62 employees (both full-time and part-time) in the bargaining unit. Granting all 62 bargaining unit employees a one-time bonus of \$350.00 would cost to the Employer \$21,700.00. Certainly, the GDRTA has the ability to fund this recommendation.

Respectfully submitted,



Daniel N. Kosanovich
Fact Finder
1/30/03

³ The information presented at the hearing indicates that the total legal fee appropriations was increased from \$220,000.00 to \$494,000.00 in 2002, largely due to labor issues. A labor relations consultant was hired to advise on the upcoming ATU negotiations for an amount not to exceed \$60,000.00. The Executive Director for example received a \$28,125.00 performance bonus for the year 2002.