

**STATE EMPLOYMENT RELATIONS BOARD  
FACT-FINDING REPORT**

STATE EMPLOYMENT  
RELATIONS BOARD

2003 MAR 21 A 10: 39

**CITY OF BEAVERCREEK, OHIO**

**and**

**COMMUNICATIONS WORKERS OF AMERICA, LOCAL 4322**

**SERB CASE NO: 02-MED-09-0781**

Fact-finding Hearing: March 14, 2003

Fact-finding Report: March 20, 2003

Employer Representative: Charles A. King, Director of Labor Relations  
Clemans, Nelson & Associates, Inc.  
411 W. Loveland Ave. Suite 101 Loveland, OH 45140

Union Representative: William Bain, District Representative  
Communications Workers of America  
20520 Center Ridge Rd. Suite 700 Cleveland, Ohio

Fact-finder: Ann C. Wendt, Ph.D., SPHR

**STIPULATION 1**

The parties stipulated that the instant dispute is properly before the Fact-finder.

**STIPULATION 2**

The parties stipulated that all tentative agreements concluded during their negotiations and/or through mediation shall continue if either party rejects the Fact-finder's Report. The following five (5) issues were presented by the parties:

Holidays  
Vacations  
Wages  
Personal Leave  
Medical and Dental Insurance

### **STIPULATION 3**

The parties stipulated that all SERB reporting requirements have been fulfilled.

### **CRITERIA**

Pursuant to 4117-9-05(J) State Employment Relations Board, the Findings of Fact and Recommendations presented in this Fact-finding Report are based on reliable information relevant to the issues before the Fact-finder.

### **BACKGROUND**

The City of Beavercreek is located in Greene County, Southwestern Ohio. It is a suburban community and part of the Dayton Metropolitan area. Being adjacent to Wright-Patterson Air Force Base, its commercial base includes federal contractors and subcontractors and related industries. It also has a broad spectrum of large retail businesses.

The City has approximately 120 employees. It has collective bargaining agreements with the Fraternal Order of Police for its police, a separate contract with the Communications Workers of America for maintenance employees, and the contract involved in the instant dispute for professional employees. This bargaining unit was certified on July 15, 1999 and the instant dispute involves the first collective bargaining contract.

### **MEDIATION**

Pursuant to the mediation suggestion of the Fact-finder, the parties indicated that they believed they were very close to a settlement and were interested in attempting to mediate a resolution to the dispute. The Mediator/Fact-finder, with tremendous effort on the part of both parties was successful in mediating a settlement of the following articles:

- Vacation – Article 20
- Holidays – Article 21
- Wages – Article 18

Consistent with Stipulation 2 (above) these issues are fully resolved if either party rejects the Fact-finder's report.

## ISSUE: PERSONAL LEAVE

### Positions

City: The Employer proposes no change to the current contract language. These employees currently enjoy the equivalent of four (4) days of personal absence leave – the same as the Police. There is not convincing reason to increase the leave at this time. (City initial position statement, Tab B)

Union: CWA has proposed the following changes to Article 19 – Personal Absence Leave. This proposal increases the personal absence time by only four (4) hours a year and brings this bargaining unit in line with the personal absence leave in the CWQ contract held by the City, but is still less than the amount of hours allowed in the Fraternal Order of Police contract held by the City. (CWA initial position statement, Appendix B – Article 19)

#### Section 19.01

Beginning January 1, following the employee's date of hire, each employee in the bargaining unit shall be granted thirty-six (36) hours of personal absence leave on January 1 of each year.

#### Section 19.02

Each newly hired employee in the bargaining unit shall be granted nine (9) additional hours of personal absence leave upon their date of hire. Thereafter, the employee shall be granted an additional nine (9) hours of personal leave for each completed ninety (90) calendar days of service until January 1 following their date of hire. Provided, no employee shall be granted greater than thirty-six (36) hours of personal absence leave.

#### Section 19.03

Personal absence leave shall be scheduled by the employee with the prior approval of his supervisor and/or Department Head, and must be used prior to January 1 of the following year, or it will be forfeited.

#### Section 19.04

Personal absence leave shall be paid at the employee's regular rate of pay, and shall be in addition to holidays and vacation time allowed to the employee under the provisions of this Agreement.

### Findings of Fact

1. The current contract provides thirty-two (32) hours of Personal Leave.

2. During the negotiation for the contracts currently enforced for the CWA (Parks and Recreation Department) and Fraternal Order of Police an additional four (4) hours of Personal Leave were negotiated. Since police officers scheduled hours of work exceed eight (8) hours per day, Personal Leave time is appropriately adjusted to reflect their different work schedule.
  
3. Neither the City nor CWA presented comparibles concerning Personal Leave. The Fact-finder obtained data from SERB concerning Personal Leave in surrounding Miami Valley communities. Cities selected were based on SERB's designation of counties included in the Miami Valley area. These counties are Auglaize, Champaign, Clark, Darke, Greene, Logan, Mercer, Miami, Montgomery, Preble, and Shelby. All cities located within these counties that provided Personal Leave data are included in the following summary. (State Employment Relations Board, QRY Benefits; obtained from SERB on March 17, 2003)

| <u>City</u>                  | <u>Number of days</u> | <u>Average number of days</u> |
|------------------------------|-----------------------|-------------------------------|
| Dayton                       | 2                     | 2                             |
| Fairborn                     | 3 - 2                 | 2.5                           |
| Huber Heights                | 2 - 3                 | 2.3                           |
| Kettering                    | 3 - 5                 | 4.3                           |
| Miamisburg                   | 1.5 - 3               | 2.6                           |
| Moraine                      | 3                     | 3                             |
| Oakwood                      | 2 - 5                 | 3.3                           |
| Springfield                  | 2 - 3                 | 2.5                           |
| Piqua                        | 3 - 6                 | 5.3                           |
| Tipp City                    | 4 - 5                 | 4.5                           |
| Trotwood                     | 5                     | 5                             |
| Troy                         | 2                     | 2                             |
| Vandalia                     | 5                     | 5                             |
| Xenia                        | 3                     | 3                             |
| Bellfountaine                | 3                     | 3                             |
| Celina                       | 2                     | 2                             |
| Greenville                   | 2 - 3                 | 2.5                           |
| Saint Marys                  | 3 - 4                 | 3.5                           |
| Sidney                       | 4                     | 4                             |
| Total average number of days |                       | 3.27                          |

### **Analysis and Recommendations**

On average cities in the eleven county Miami Valley area, identified by SERB, provide an average of 3.27 Personal Leave days. The Personal Leave days among these cities range from 1.5 – 6 days. The CWA in Beavercreek at thirty-two (32) hours already exceeds the average of other cities in the Miami Valley area. Nonetheless, the City has

previously agreed, during the 2003 negotiation cycle, for CWA, Local 4322, to increase that Unit's Personal Leave by four (4) hours per year. The FOP, although on a slightly longer work day, also negotiated a comparable increase in Personal Leave hours. In the interest of maintaining equity across the City's bargaining units the Fact-finder believes the CWA's request for four (4) additional hours of Personal Leave should be granted.

**Recommendation:** The City shall provide each Employee included in the Bargaining Unit **thirty-six** (36) [emphasis added] hours of Personal Absence Leave during each of the three (3) calendar years this Agreement remains in effect to be scheduled by such employee with the prior approval of his Supervisor and/or Department Head. Such Personal Absence Leave shall be with pay and shall be in addition to Holidays and Vacation time allowed to the Employee under the provisions of this Agreement.

## ISSUES: MEDICAL AND DENTAL INSURANCE

### Positions

City: The Employer is proposing language that mirrors the insurance language found in the two (2) other Collective Bargaining Units in the City. The Employer opposes the inclusions of "me too" language concerning non-represented City employees, as the language was transitory and was intended to ensure that the employees in this unit would not be the only City employees contributing toward their insurance premium. Because other City employees are now paying some of the cost of their insurance, there is no need for this language. (City initial position statement, Tab E) (Note: Some additions indicated by shading)

#### Section 30.01 A

All full-time bargaining unit members and their eligible dependents shall be eligible to participate in **one of** the City's insurance plans consisting of comprehensive medical benefits, major medical coverage, diagnostic services, hospitalization, surgical coverages and emergency care. Employees covered herein may choose to participate in the medical insurance plans provided by the City during the term of this Agreement. Any employee who elects not to be insured under any insurance plan referenced in this Article shall not receive any premium contributions made by the City for such insurance plan as salary, wages, compensation, reimbursement or in any other form or manner.

#### Section 30.01 B

The City shall have the ability to control the cost of the health care benefit plan by establishing programs such as managed care, HMO programs,

network care, traditional commercial benefit programs, self-funded benefit administration or any other similar strategy that manages the cost of the provision of health care services provided that programs established during the term of this Agreement are generally comparable to those in existence at the beginning of this Agreement

Effective January 1, 2003, the City will maintain current coverage from January 1, 2003 through March 31, 2003 at no cost to the employees.

Effective April 1, 2003 and for the duration of this Agreement Employees electing the OOP will pay five percent (5%) of the total premium; provided, that in the event of a premium increase in excess of eighteen percent (18%), the City shall assume responsibility for any amount in excess of eighteen percent (18%).

Effective April 1, 2003 and for the duration of this Agreement, the City will offer an HMO plan similar to the plan described at the insurance information meeting of February 22, 2002. This plan will be offered at no cost to employees. (NOTE: above language is an addition to current language)

#### Section 30.01 C

~~Employees covered herein may choose to participate in the medical insurance plan provided by the City during the term of this Agreement.~~ It is understood that if a bargaining unit member or eligible dependent incurs covered hospital or other medical expenses in connection with an illness or injury caused by the negligence or wrongful act of a third party, the insurance provider shall be the subrogated party to the extent of any and all payments made by said provider with respect to such illness or injury and the employee of his/her agent shall execute all papers to secure such provider of such right of subrogation.

#### Section 30.02 A

All full-time bargaining unit members and their eligible dependents shall be eligible to participate in the City's dental insurance plan during this Agreement. This dental plan shall ~~include the following:~~ preventive services, basic services, major services, annual maximum, orthodontics (fifty percent [50%]), and lifetime maximum. The City shall pay the full cost of premiums during the term of this Agreement.

#### Section 30.02 C

It is understood that if a bargaining unit member or eligible dependent incurs covered dental, or other expenses in connection with an illness or injury caused by the negligence or wrongful act of a third party, the insurance provider shall be the subrogated party to the extent of any and all payments made by said provider with respect to such illness or injury

and the employee or his/her agent shall execute all papers to secure such provider of such right of subrogation.

Union: CWA has proposed the following changes (below) for Article 30. In essence both parties are in agreement on language that would require CWA Members to pay substantial premiums for the first time. The parties do not agree on keeping current language for the last sentence in 30.01 C as follows “Provided, if the non-represented employees of the City are not contributing to the cost of insurance premiums at that time, this provision shall be void, and the City shall continue to pay the full cost of premiums for all coverage provided in this section.”

CWA also proposes to keep that same current language in the agreement as it related to 30.02 Dental Insurance.

CWA believes this is an equity issue and all City employees should continue to share equally in these premiums contributions. (CWA initial position statement, Appendix B – Article 30)

#### Section 30.01 C

Effective April 1, 2003, and for the duration of this Agreement employees may elect the City’s PPO and will pay five percent (5%) of the total premium; provided, that in the event of a premium increase in excess of eighteen percent (18%), the City shall assume responsibility for any amount in excess of eighteen percent (18%). Provided, if the non-represented employees of the City are not contributing to the cost of insurance premiums at that time, this provision shall be void, and the City shall continue to pay the full cost of premiums for all coverages provided in this section.

#### Section 30.02 A

All full-time bargaining unit members and their eligible dependents shall be eligible to participate in the City’s dental insurance plan during this Agreement. This dental plan shall include the following: preventive services, basic services, major services, annual maximum, orthodontics (fifty percent [50%]), lifetime maximum and no deductible. The City shall pay the full cost of premiums during the term of this Agreement.

#### Section 30.02 C

If at any time in the future, the bargaining unit members are required to pay a portion or whole of the premium, this will occur only provided, if the non-represented employees of the City are not contributing to the cost of insurance premiums at that time, this provision shall be void, and the City shall continue to pay the full cost of premiums for all coverage provided in this section.

### Findings of Fact

1. The current contract CWA, Local 4322, employees currently do not contribute to the premium cost of the Medical and Dental Insurance. Further, the current contract contains “me too language” which reads as follows, “...provided, if the non-represented employees of the City are not contributing to the cost of insurance premiums at that time, this provision shall be void, and the City shall continue to pay the full cost of premiums for all coverages provided in this section.” (Contract between City of Beavercreek and CAW, Local 4322, Section 30.01 C)
2. Both the CWA (Parks and Recreation Department) and FOP contracts contain a five percent (5%) contribution toward Medical and Dental Insurance beginning in 2004. Neither of these contracts contain the “me too language” that currently exists in CWA, Local 4322 contract.
3. Neither the City nor CWA presented comparibles concerning the employee contributions toward Medical and Dental Insurance. The Fact-finder obtained data from SERB concerning employee contributions in surrounding Miami Valley communities.
4. For consistency in preparing the Fact-finder’s report, the Fact-finder used the same comparable cities for Medical and Dental Insurance that were used for Personal Leave. No delineation has been made between single and dependent coverage, since the City’s proposal for premium contributions by employees is based on a flat rate of 5% of the premium cost. (State Employment Relations Board, Benefits Report; obtained from SERB on March 18, 2003)

| <u>City</u>   | <u>Employee’s Contribution</u> |
|---------------|--------------------------------|
| Dayton        | not available                  |
| Fairborn      | 15%*                           |
| Huber Heights | 3% and 10%**                   |
| Kettering     | 0%                             |
| Maimisburg    | 5% and 7.5%**                  |
| Moraine       | 0%                             |
| Oakwood       | 0%                             |
| Springfield   | 10%                            |
| Piqua         | not available                  |
| Tipp City     | 10%                            |
| Trotwood      | 0%                             |
| Troy          | 0%                             |
| Vandalia      | not available                  |
| Xenia         | 15%                            |
| Bellefontaine | 15%                            |
| Celina        | 0%                             |
| Greenville    | not available                  |

Saint Marys  
Sidney

not available  
13%

\* Fairborn has three bargaining units, two of the three units have a 15% contribution. The IAFF has an employee contribution rate of 10% for single coverage and 15% for dependent coverage.

\*\* Variable by union

5. The average of the comparable cities is 4.77%. This is slightly lower than the City's request for five percent (5%) employee contribution toward Medical and Dental Insurance beginning in 2004.

### **Analysis and Recommendations**

It is estimated that during 2003 organizations will incur a 12.8% increase in health care costs. Clearly, in 2003 a Collective Bargaining Contract that requires employees to make no contribution to Medical and Dental Insurance is an artifact of the past. The five percent (5%) premium contribution request by the employer in today's environment of spiraling health care cost is minimal. While the five percent (5%) is slightly higher than the average of comparable cities, that is based on contracts in effect at this time, not contracts that will take effect in 2004. Although, no employee wants to pay more for health insurance coverage than they have in the past, it is imperative that employees recognize their employers cannot bear the exploding cost of health care in the twenty-first (21<sup>st</sup>) century. The Fact-finder recognizes that health care cost is not an issue that the City of Beavercreek and CWA, Local 4322 can fully resolve. The increasing cost of health care is a national issue that must be dealt with by Congress, the President, and state legislatures, however the Fact-finder recognizes that CWA must expect a minimal consequence in the form of a premium contribution.

The City has arranged for the employee premium contributions to be deducted on a pre-tax basis. During the fact-finding hearing the City's representative indicated this pre-tax deduction would result in approximately twenty-seven percent (27%) reduction in out-of-pocket cost to employee. The Fact-finder subsequently contacted two certified public accountants (CPA) to verify the impact of the out-of-pocket contribution to employees. Both CPAs indicated that while the twenty-seven (27%) percent reduction was most likely appropriate for employees whose salaries exceeded \$50,000 per year it was more likely that these savings based on the pre-tax contribution would be closer to eighteen to twenty percent (18% - 20%) per year for the typical employee. The Fact-finder believes that even the latter savings are appreciable, but feels compelled to point out that the twenty-seven percent (27%) suggested, may apply to only a limited number of employees.

The CWA, in proposing continuation of the "me too language," asserts that an appropriate comparison for internal equity between this Bargaining Unit and other city employees is that the non-represented parties be the standard of comparison to this

Bargaining Unit. In the context of Collective Bargaining, this is an unusual standard of comparison. The concept of equal treatment is a well established principle in Collective Bargaining, however in assessing equal treatment that assessment is typically made relative to other members of the Bargaining Unit. It is very unusual in Collective Bargaining contracts that an equity standard is applied between organized employees and unorganized employees. The very nature of organization created differences between these two groups. Furthermore, by nature of their organized / unorganized status other differences exist (e.g., exempt vs. non-exempt employees relative to overtime provisions and hours of work). While the Fact-finder recognizes the CWA employees desire equitable treatment relative to other City employees a more appropriate standard for equity outside the CWA Bargaining Unit would be to look to other organized employees.

**Recommendation:** The Fact-finder recommends the following language for Medical and Dental Insurance.

Section 30.01 A

All full-time bargaining unit members and their eligible dependents shall be eligible to participate in one of the City's insurance plans consisting of comprehensive medical benefits, major medical coverage, diagnostic services, hospitalization, surgical coverages and emergency care. Employees covered herein may choose to participate in the medical insurance plans provided by the City during the term of this Agreement. Any employee who elects not to be insured under any insurance plan referenced in this Article shall not receive any premium contributions made by the City for such insurance plan as salary, wages, compensation, reimbursement or in any other form or manner.

Section 30.01 B

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Section 30.01 C

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Section 30.02 A

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\_\_\_\_\_  
Ann C. Wendt  
Fact-finder

\_\_\_\_\_  
Date

*Ann C. Wendt, Ph.D., SPHR*

*Arbitrator • Mediator*

STATE EMPLOYMENT  
RELATIONS BOARD

March 20, 2003

2003 MAR 21 A 10:39

Mr. William Bain  
Communications Workers of America  
Local No. 4322  
20525 Center Ridge Rd., Suite 700  
Rocky River, Ohio 44116

Mr. Charles A. King  
Clemans, Nelson & Associates, Inc.  
411 W. Loveland Ave., Suite 101  
Loveland, Ohio 45140

**RE:** SERB Case No.: 02-MED-09-0781

Dear Messrs. King and Bain:

Enclosed herewith are two copies of the referenced Fact-finding Report. Also enclosed are the Invoice for services and related expenses, and documentation for the expenses.

Thanks for selecting me to hear the referenced dispute. It was a pleasure working with you. Should you have need for a Fact-finder in the future, I would welcome the opportunity to work with you again.

Sincerely,



Ann C. Wendt, Ph.D., SPHR  
Fact-finder

Enclosures - 2

cc: Mr. Dale A. Zimmer  
Administrator, Bureau of Mediation  
State Employment Relations Board  
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Columbus, Ohio 43215-4213

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