

FACT FINDER REPORT

STATE EMPLOYMENT
RELATIONS BOARD

Before the
State Employment Relations Board
State of Ohio

2003 JUL 22 A 10:26

July 21, 2003

In the Matter of:

INTERNATIONAL BROTHERHOOD of
TEAMSTERS, LOCAL 100
Employee Organization

and

The CITY of MONROE, OHIO
Employer

Case No. 02-MED-09-0912

I. HEARING:

DATE: July 3, 2003, 9:00 a.m.

LOCATION: Monroe City Hall

ATTENDANCE:

For the Employee Organization:

Susan D. Jansen, Attorney, Logothetis, Pence & Doll
Jimmy Reed, Secretary-Treasurer, Teamsters Local 100
Lee Turner, Operator/Laborer II
Scott Smith, Operator/Laborer II
Delbert Playforth, Operator/Laborer II/Water

For the Employer:

Donald L. Crain, Attorney, Frost Brown Todd
W. Joseph Scholler, Attorney, Frost Brown Todd
William J. Brock, PE, Acting City Manager

Fact Finder:

James L. Ferree

INTRODUCTION:

The City of Monroe, Ohio (herein called “the Employer” or “the City”) employs nine operator/laborers, including seven in its Street Department and two in the Water Department, and one meter installer/reader in the Water Department, all ten of whom are represented in collective bargaining by Teamsters Local Union No. 100 (“the Employee Organization” or “the Union”). The Union was certified on September 5, 2002.

Bargaining commenced on February 12, 2003. The parties met on thirteen occasions and reached agreement on many issues: Purpose (Article 1); Recognition, Meetings, Bulletin Board (Article 2); Modification, Separability and Conflict of Laws (Article 4); Management Rights (Article 5); Grievance Procedure (Article 7); Probationary Period (Article 9); Discipline (Article 10); Drug Free Workplace (Article 11); Personnel Files (Article 12); Safety and Health (Article 15); Seniority (Article 16); Hours of Work and Overtime (Article 17); Call-in Pay (Article 18); Training and Education (Article 22); Bereavement Leave, Military Leave, Jury Leave and Other Leave (Article 25); Sub-contracting (Article 29); Bargaining Unit Work (Article 31); Job Posting (Article 34); Associates/Union Business (Article 34a); Miscellaneous (Article 35); No Strike or Lockout (Article 36); No Discrimination (Article 37); Arbitration (Article 38); Residency (Article 39); Waiver in Case of Emergency (Article 40); and Direct Deposit & Deferred Compensation (Article 41). These agreements are hereby incorporated into this report, and it is recommended that they be included in the collective bargaining agreement.

During negotiations, the parties failed to reach agreement on eight issues. The parties selected the undersigned, who was appointed by the State Employment Relations Board (“SERB”) to serve as Fact Finder in this matter, pursuant to Ohio Revised Code (“ORC”) Section 4117.14(C)(3). A fact-finding hearing was conducted July 3, 2003.

II. MEDIATION:

At the fact-finding hearing, the Fact Finder offered to mediate the outstanding issues. The parties resolved two of the remaining issues, regarding Article 19, Holidays; and Article 20, Vacations. Those agreements, which were reduced to writing at the hearing, are hereby incorporated into this report, and it is recommended that they be included in the collective bargaining agreement. The parties also agreed to extend the

time for fact finding to Monday, July 21, 2003. Having considered the evidence presented at the hearing, the Fact Finder hereby issues his report and recommendations.

The remaining unresolved issues are:

Issue 1, Article 28: Wages

Issue 2, Article 21: Insurance

Issue 3, Article 3: Union Membership & Fair Share

Issue 4, Article 24: Sick Leave

Issue 5, Article 23: Uniforms

Issue 6, Article 33: Duration.

III. CRITERIA:

Consideration was given to the criteria listed in Rule 4117-9-05 of the State

Employment Relations Board:

(J) The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

(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.

IV. ISSUES AND RECOMMENDATIONS

Issue 1, Article 28: Wages

Union Position:

The Union proposed a three year contract, with 5% wage increases for each of the first two years, and at the end of the first six months of a newly-hired employee's hire, and an increase of 10% in the third year. The Union also proposed that Water Department employees receive an additional 3% for a Class 2 Distribution License and another 5% for a Class 2 Operators License. Further, it was proposed that employees working in higher paid jobs be paid at the higher rate.

Management Position:

The Employer proposed a three year contract, with an immediate raise in the annual step increases of each employee ranging from 0.8% to 10.5%, and averaging 3.1%. The City proposed no wage increase in 2004, and either a 2% wage increase for each employee on July 1, 2005, or reopening the contract for renegotiation of both the Wage article and the Health Insurance article. The City also proposed that employees receive no incremental step increase for a year in which they fail to attain a satisfactory performance rating, and that employees who are demoted should be paid at the lower pay grade of their new positions. The Employer proposed that an employee who works in a higher classification for at least eight hours should be eligible for one dollar for each hour worked in that job.

Findings of Fact:

The Employer argued that the City is in financial trouble, and that publicity about the shortfall has greatly reduced the chance of increasing revenue by a tax increase. In recent years, Monroe has grown rapidly, which necessitated staff increases in both the police and fire departments and building the facilities to house them. The police and fire employees joined unions and demanded higher wages, which they deserved, based on comparisons with other communities. The City also gave increases of about fifteen percent to its other employees, including the members of the bargaining unit involved here, prior to the current negotiations. These employees are eligible for overtime pay, also, unlike police and fire employees. When the current economic recession began, the Employer discovered that its forecasts were no longer accurate, and its financial position

was much worse than expected. A recent City Council meeting was attended by an overflow crowd to hear proposals on increased millage on property tax or increased income tax. The City does not want to lay off employees, but it is concerned about how it can pay for even the wage increase which the Employer has proposed.

Acting City Manager William Brock testified that employees in this bargaining unit have received merit increases and an across-the-board increase during 2002 which raised their pay over 15%, on average. He produced a table showing individual employees' increases, which were all 15.7%, except the employee who started the year as the highest paid, and received increases of 10.2%, another employee who received 15.8%, and one who was hired during the year and received no increases.

Mr. Brock testified about the information he gave City Council in the public forum held on June 26, 2003. In short, he estimated that total revenues will be \$6.897 million in 2003, and expenditures will be \$8.098 million.

General Fund revenues are forecast to total \$4.67 million (including \$2.6 million in income tax, \$645,000 in property tax, \$500,000 in building permit fees, and \$375,000 in "motel, sin and estate taxes"), and general administration expenditures are predicted to be \$2.937 million (\$1.8 million for wages and benefits, and \$1.12 million for operation and maintenance).

The street fund is expected to produce \$366,000 in revenue and \$441,500 in expenditures. Fire department levies and billing, \$1.026 million, will be offset by \$2.576 million in expenditures. Police department revenue, \$428,000, will be short of the expected \$1.46 million in expenditures. Parks are expected to produce \$162,000 and to cost \$23,600

In addition, six "enterprise funds" are intended to be self-sustaining operations. The sewer, storm sewer, and cemetery funds are expected to match expenses with revenues. The water fund is predicted to raise \$1.7 million revenue, and to experience \$1.46 million in expenses. The garbage fund is expected to show \$290,000 revenue, and \$285,000 expenses.

Moreover, payments on general obligation bonds will cost \$415,000, and special assessments will generate \$245,000 in revenue, and the same amount in expenses.

Mr. Brock said he told City Council that the \$1.2 million gap is being dealt with by enacting strict budget controls, spending all positive fund balances, shifting expenditures to enterprise funds, and making no payments on the principal of short term loans. He predicted that this strategy will result in all positive fund balances being depleted by the end of the year, operating cuts being needed in 2004, enterprise fund monies being used for non-enterprise functions in 2004, and no capital improvements.

Union Position on Wages

The Employee Organization stated that it understands and appreciates the City's financial problem, but the problem is that employees historically have received 5% increases, and in 2002 the City negotiated wage increases for police and fire employees. Some of those employees have received as much as 21%, and they are guaranteed 4% more on June 1, 2003, and again on June 1, 2004. It is impossible for the Union to agree to 2%. The perception is that this bargaining unit is being asked to pay for mistakes that were made in the past, and these employees are unwilling to do that. They see new City buildings, and ask why there is a budget crisis now, when they see development all around them. The newspapers write about mismanagement, but the area is far from destitute. As recently as a year ago, the City boasted about its future, and the current tough times do not change the fundamental prognosis for a bright future. The Union is not interested in the long term concessions that the City is asking for.

Reviewing the comparisons of top level salaries offered by the Employer, the Union notes that most of the employees in this unit are currently being paid in the middle of their scale, not the top. Looking at the revenues and expenditures which Acting City Manager Brock presented in the City Council meeting, the General Fund is in the black. The significant increases in expenditures in the categories of fire and police are because those employees' wages and benefits significantly increased in 2003. That creates a perception that the City has agreed to pay them increased wages and benefits, and any failure to do so for the employees in this unit creates an appearance that other employees are valued more than they are, and it generates a morale issue.

With that background, the Union made its proposal of a 5% increase on the anniversary of each employee's date of hire, which is the system presently in place. In

year two of the contract, the Union proposes an additional 5% effective January 1, 2004. In January 2005, the Union proposes an additional 10% increase. Contrary to the City's arguments, these employees are nowhere near the top of wage scales paid by comparable cities, especially when the City's attempt to compress the scale is taken into consideration. The 10% increase is justified, and it was placed at the end of the contract term to give the City more time to prepare for it.

There is no dispute about the water department employees' premium pay for the licenses they hold. It is justified because, in addition to the commercial driver's license all of the unit employees must hold, water department employees must obtain and keep up their additional licenses by staying abreast of their field, to the advantage of the City. One of those employees is currently at the top of his pay range, and would not get a 5% step increase in the second year of the contract.

Employees who work out of their classifications in higher paying positions should receive the higher rate of pay for all time worked, the Union argued.

The Union presented evidence of employees' current wage rates, which shows that employees are actually receiving from \$12.54 to \$17.65 per hour, with most employees in the \$13.17 - \$13.83 hourly rates.

The Union's list of comparable cities are similar sized (6000-10,000 population) cities in the region, as opposed to the Employer's list drawn from across the state. It is inappropriate to compare Monroe with cities in southeast Ohio, where there may be a big economic difference. The Union would compare cities in Butler County and surrounding counties. Each city also classifies its employees somewhat differently, but the Union looked at job titles in collective bargaining agreements and the actual wages paid. This unit's employees are at, or near, the midpoint of wages, not the top. Comparing employees in a laborer classification, Monroe employees are near the bottom.

The Union offered a survey of wages to be paid by area cities of comparable size over the next few years, which shows that Monroe employees are losing ground, compared with employees in other cities. The Union urged the Fact Finder to consider the fringe benefits, such as shoe allowances offered by comparable jurisdictions.

In 2002 an ordinance was passed establishing a classification and wage range system, which the Union is willing to include in the contract. The table shows ten steps in the columns, and 22 rates in the rows. For instance, row L shows "Operator/Laborer II/Meter Install-reader" starting at \$11.38 in the first step, and topping out at \$17.65 in Step 10. The wage rate in each step is 5% above the previous one in the current system.

The police patrol officer contract shows that they received from 7% to 21% increases, to be followed by 4% increases effective June 1, 2003 and June 1, 2004. Police sergeants also received increases. An April 2002 fact-finding decision in the bargaining between the City and the Fraternal Order of Police, by Fact Finder David Stanton was offered for its discussion of health insurance, which he recommended should continue at 100% financing by the Employer, despite a significant wage increase in the first year of the contract. Although the economics have changed, the relationships among cost items discussed in the report have not changed.

The Firefighters contract also provides 4% wage increases on January 1, 2003 and 4% on January 1, 2004. The firefighters are paid a dollar an hour bonus, for a maximum of 24 hours a day, when they are required to work out of their classifications, contrary to the City's proposal that this unit's employees should have to work eight hours before getting the higher rate.

The Union has costed-out its wage proposal, and found that the City can continue its practice of giving a 5% annual increase in the first year for \$327,330. Another 5% increase on January 1, 2004 will cost \$349,436. The January 2005 increase would cost \$384,379.

The City's 2002 comprehensive annual financial report was unavailable, but the 2001 report shows that the City's forecast of continued prosperity for the area resulted from dramatic increases in income tax revenue, revenue from services, etc. Once the City gets its financial house in order, the prosperity of the area should put it in a good position to take advantage of its industrial base, which has not changed since 2001. While other City employees continue to flourish, this bargaining unit should not bear the brunt of the load, in getting over this bump in the road.

The Employer responded that the “bump in the road” is a \$1.2 million problem, which the City hopes to solve in a few years, but it will be a \$1.2 million problem next year as well. The economy is a major contributor to the problem. Just looking at the tax default rate, which is typically 2% in other areas, the rate in Monroe is approaching 8%. The poor economy has caused the highest unemployment rate in years, with people being laid off and income tax revenues falling. While the other bargaining units got 4% increases in the past, the City can no longer do that. There would be a public outcry. Instead, there will have to be drastic cuts in spending.

The City chose comparable cities in these negotiations the same way it did with the police and fire employee unions, using State Employment Relations Board figures. When the City went from a volunteer fire department to full time employees, and increased the size of the department, it cost a lot from the general fund, but it was necessary. The police department expansion was the same situation.

In 2002, the City noted, the employees in this bargaining unit got about the same deal as the police and fire employees, with a 14% average wage increase. The city contends that bargaining unit employees have been treated fairly. Both groups will get about the same deal in 2003, but the City got substantial concessions on overtime costs in both the police and fire department contracts. The City’s overtime costs for those employees have been reduced 40-50%, and the City has used those savings to pay for some of those wage increases. The Union has convinced the Employer that a similar overtime arrangement would not be right for this bargaining unit. The City said that what the Union is proposing is 5% on top of a 5% step increase, and the Union replied that there would be no step increases under its proposal. In the City’s proposal, it asserted, employees who are not at the top of their steps will be better off, and the City’s cost of administering the plan will be reduced. The City is asking to continue the existing one dollar per hour bonus for working out of classification, with the bonus applying after eight hours of work.

The City cannot count on the economy improving, as the Union hopes it will. The City has to support excellent fire and police departments, despite the cost.

The Union pointed out that it proposes that wage increases be effective throughout the year, on employees' anniversary dates, rather than hitting the City all at once, at the beginning of the year. By "back loading" the contract, with the larger increase in the third year, the Union has minimized the City's cost over the life of the contract.

The Employer pointed out that it had proposed an alternative to the 2% wage increase, which would provide for a wage reopener after a year. The Union sought clarification regarding the City's proposed new July 1, 2003 wage scale, and the Employer explained that the new rates would go into effect on the effective date of the contract, and the new steps would become effective on July 1, 2005. In effect, the employees would get about 5.5% in 2005.

The Union summarized its wage proposal as simple across-the-board wage increases.

Fact Finder Recommendation and Rationale:

I am bound to consider factors set forth in the statute, among which are "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; [and] . . . The lawful authority of the public employer;"

It is undisputed that the City is in serious, if temporary, financial difficulty. Employees in this bargaining unit will have to be part of the solution to that problem, not part of the problem. They surely understand that the City must cut costs, including labor costs, despite the fact that their co-workers in the police and fire departments were able to negotiate healthy wage increases, due to fortunate timing. Employees in the safety forces have made concessions with respect to overtime, and the City has been able to limit costs by delaying the filling of vacant positions.

The Employer is limited in the steps it can take to increase revenues, and cannot count on passing an increase in either the income tax or the property tax. The least desirable option would be to lay off valued employees. At this point, it makes sense to restrain the City's expenses, including its payroll costs. Therefore, I am inclined to adopt most of the Employer's wage proposal, with some modification designed to soften the impact on bargaining unit employees.

In effect, the Employer's proposal would incorporate line "L" of the existing pay grid, which covers most employees in this bargaining unit, into the contract, and would

adjust the pay schedule upward by 3.5%. Employees would be placed on the new steps in a manner which would, in effect, grant employees a pay increase averaging 3.1% on the anniversary date of their employment. Employees are accustomed to annual increases on their anniversary dates, and both parties have proposed to continue the practice, which I will recommend. My analysis of the comparable wages of similar sized cities, and of other employees of Monroe, persuades me that a 3.1% pay increase in the first year of the contract is both sufficient and feasible.

The parties are in disagreement regarding wage increases in the second and third years of the contract. The Employer would offer no increase in the second year and only 2% in the third (or a reopening of the contract to negotiate new wage rates and insurance contributions), while the Employee Organization wants 5% in the second year and 10% in the third. I cannot claim any better ability to foresee the future than can the experts cited by the parties, but I have a sense that these employees can be given some relief without severely impacting the City. I will recommend increases of 3% for each year. I will not recommend permitting either party to reopen the contract for renegotiation of wages and insurance contributions. The parties and the employees should be able to rely on the contract to govern their relationship for the full three years, unless both parties wish to reopen it during its term.

Both parties also agreed that the incentive bonus for water employees with special licenses should continue, and I will also recommend it.

I am left with the impression that employees have received annual increases, up to the limit of their pay scale, on a regular, automatic basis. The Employer has proposed to convert this longevity pay plan into a disciplinary tool by withholding increases for employees who fail to achieve a satisfactory performance evaluation. This is the first contract for the employees in this bargaining unit, and it should focus on institutionalizing the pre-existing working conditions, except where both parties agree to changes. Since the Union has not agreed to a new merit pay plan, I will recommend against it.

The City has proposed that it should have the ability to discipline employees by reducing them in grade. If all employees in the bargaining unit are in the same grade, as proposed by the Employer and recommended below, then any demotion would

presumably remove the employee from this bargaining unit into a lower paying position outside the unit. The same scenario arises if an employee volunteers for a demotion or is required to step down due to a physical disability. This contract would no longer apply to those employees who move into positions outside the bargaining unit, so I will not recommend inclusion of this provision in the parties' agreement.

Although the parties agree that unit employees should receive the higher rate of pay when working outside their own classification, there is disagreement on when the higher rate should be triggered. Experience suggests that brief periods covering for an absent supervisor or fellow employee need not place on the Employer the administrative burden of changing the employee's pay rate for a matter of hours, yet the Employer should be limited in its use of upward substitutions by being required to pay for the work done. I will recommend that employees who work outside their classification for more than a half day (4 hours) should be paid at the higher rate for all time spent working in a higher paid position.

Other proposals by the Employer appear to be pro forma language merely describing current practices, and I will recommend that they be included in the contract.

Recommendation:

It is recommended that the parties include the following language in their contract.

ARTICLE 28

WAGES

28.1 Beginning on the effective date of this Agreement, hiring rates and rates of pay for Employees shall be in accordance with the step schedule attached as Appendix A.

28.2 Increases – The wage scale shall increase by 3.0% on July 1, 2004, and 3.0% on July 1, 2005.

28.3 Step increases shall occur on each employee's anniversary date according to the wage schedule attached as Appendix A.

28.4 Return From Military Leave. Whenever a member returns from military leave, he shall be restored to his former position at the step which corresponds to the step he held at the time of his departure and, in addition, shall be granted any increase in salary had he not entered the military.

28.5 After working in a higher classification for at least four hours in a week, an employee is eligible to receive the higher rate of pay for every hour worked in that higher classification.

It is further recommended that Appendix A, referred to above, should read as follows:

APPENDIX A

Beginning on the effective date of this agreement, the following pay scale shall apply.

Step	1	2	3	4	5	6	7	8	9	10
3.50%	\$ 13.21	\$13.67	\$ 14.15	\$ 14.64	\$ 15.16	\$ 15.69	\$ 16.23	\$ 16.80	\$ 17.39	\$ 18.00

Current employees will be placed on the wage scale in the step appropriate to their years of service, with the following wage increases resulting.

Delbert Playforth	8+	\$ 18.17	ab	2.9%
Ed Turner	4+	\$ 15.61	a	2.4%
James Bailey	2	\$ 13.67		3.8%
Anthony Cook	4	\$ 14.64		0.8%
Bill Hampton	3	\$ 14.15		2.3%
Ed Lawless	3	\$ 14.15		2.3%
Mike Shoemaker	10	\$ 18.00		2.0%
Carl Taylor	4	\$ 14.64		0.8%
Lee Turner	3	\$ 14.15		2.3%
Scott Smith	2	\$ 13.67		3.8%
Glenn Fitzpatrick	1	\$ 13.21		10.5%
		Average		3.1%

- a) Includes a 3% Incentive for a Class 2 Distribution License for Water Department employees only.
- b) Includes a 5% Incentive for a Class 2 Operator's License for Water Department employees only.

Effective July 1, 2004, the pay scale will be increased 3.0%, as follows:

Step	1	2	3	4	5	6	7	8	9	10
	\$ 13.61	\$14.08	\$ 14.57	\$ 15.08	\$ 15.61	\$ 16.16	\$ 16.72	\$ 17.30	\$ 17.91	\$ 18.54

Effective July 1, 2005, the pay scale will be increased 3.0%, as follows:

Step	1	2	3	4	5	6	7	8	9	10
	\$ 14.01	\$14.50	\$ 15.01	\$ 15.53	\$ 16.08	\$ 16.65	\$ 17.22	\$ 17.82	\$ 18.45	\$ 19.10

Issue 2, Article 21: Insurance

Union Position:

The Union proposed the following:

Section 1. Insurance. The City shall offer a group health care, vision, and dental care insurance to employees equivalent to that offered to other City Employees.

- a) With respect to all insurance coverage provided to Employees, the City retains the right to change insurance carriers or self-insure all or any portion of the benefits as long as the level of benefits remain substantially the same.
- b) A difference between any Employee (or his beneficiary) and the insurance carrier(s) or the processor of claims shall not be subject to the grievance procedure provided for in the collective bargaining agreement between the City and the Union. The City will, however, designate representatives who will be available for consultation with claimant Employees (or with a designated Benefit Claim Representative of the Union), so that a full explanation may be given with respect to the basis of disposition of claims.
- c) The failure of any insurance carrier(s) to provide any benefit for which it has contracted shall result in no liability to the City or to the Union; nor shall such failure be considered a breach by the City or the Union of any obligation undertaken under this or any other agreement. Nothing in this Agreement, however, shall be construed to relieve any insurance carrier from any liability it may have to the City, Union, Employee or beneficiary of any Employee.
- d) The terms of any contract or policy issued by an insurance carrier shall be controlling in all matters pertaining to benefits thereunder.
- e) In each calendar year that an Employee elects not to be covered by all insurance plans provided by the City, he shall receive \$1,000.00 at the end of that year.

Section 2. Health and Dental Care Insurance Premiums. The City shall pay 100% of the premiums for single/or family coverage for the health care and dental programs.

Section 3. Life Insurance. The Employer will provide, at no cost, to each regular full-time employee while employed under this Agreement, a life insurance policy having a death benefit of \$25,000 with an accidental death and dismemberment endorsement.

Section 4. Availability of Group Coverage. Group coverage shall become available to new members of the bargaining unit upon their application, after they have completed 60 days of employment with the City, as of the beginning of the following month or as soon thereafter as coverage under the City's policies can be effectuated.

Management Position:

The City's proposal tracks the foregoing, except as follows. The Employer would drop Section 2, above, and insert a different section:

21.2 Health and Dental Care Insurance Premiums. The City shall offer three options for Health Insurance. Effective July 1, 2004, employees are required to make a 20% contribution for Plan A, 10% contribution for Plan B, and 0% contribution for Plan C. Specific information about each plan will be available from the City Manager's office. The open enrollment period for changing health plans is January 1 – 30, 2004.

The City would add a phrase, in bold type below:

21.4 e. In each calendar year that an Employee elects not to be covered by all insurance plans provided by the City, he shall receive \$1,000.00 at the end of the year, **provided he provides presentation of proof of coverage from another source**

The City would omit the 60-day waiting period for new employees to sign up, as follows:

21.5 Availability of Group Coverage. Group coverage shall become available to new members of the bargaining unit upon their application, as of the beginning of the following month or as soon thereafter as coverage under the City's policies can be effectuated.

Findings of Fact:

The City stated that it has been proud to be able to pay the entire health care insurance premium, in the face of a strong trend to the contrary, but now it has faced reality and needs to have all employees begin sharing the cost. It is this bargaining unit's bad luck to be the first with a contract negotiated after this decision was made. The City's health insurance costs will continue to increase, and will have an adverse impact on the budget in future years. In 2002 the City minimized the increase in its health insurance premium to 8.65% by changing plans. In 2003, the premium is 26% greater, and it is projected to increase by 25% in 2004 if the City keeps the same plan design. The City proposes to offer a three-tier design, with the most comprehensive coverage (Plan A) available to employees who will contribute 20% of the premium, an economy package (Plan B) for a 10% contribution, and bargain basement coverage (Plan C) available at no cost to employees. The current level of coverage would be Plan A.

The Employer offered, for the Fact Finder's consideration, a study done by Hewitt Associates in 2001 which forecast double digit increases in health care costs. The study reported that many employers pass along at least 25 to 30 percent of the increase to their

employees. The Cincinnati area had the largest health care cost increases among 15 major metropolitan areas in 2001, at 15.8%; the national average increase was 10.2%. In 2001, the national average health care cost, per employee, was \$4,778, and it was projected to rise to \$5,524 in 2002. The SERB survey showed that the average Ohio public employee pays 10% of the premium cost of health insurance. Under the Employer's proposal, employees would not have to start paying for their insurance until July, 2004.

The statewide AFSCME collective bargaining agreement includes a 5% increase in employees' share of the health care insurance premium, to 15%. The Conciliator in that case recognized the inevitable need for employees to help share the cost. The Employer says that other City employees will carry their share of the burden, as new contracts are negotiated.

The Union said that health insurance is a totally different matter than wages: if the cost is truly a serious concern, the City could have required non-unionized employees to pay a share a long time ago. The bargaining unit employees will not willingly be the first group to make premium contributions. If the safety forces begin paying a share of health insurance costs, then the City can come back to the Union after this first contract expires and ask for relief. The City should not try to recoup their losses in the first contract for this group of employees, who deserve some stability in the first three years. The experience of State of Ohio employees, who were forced to make another 5% contribution after conciliation, is not relevant to this bargaining unit.

A comparison of 15 comparable size cities in the region shows that four employers pay 100% of the cost, and the average city pays 91.0% of the premiums. The City of Monroe's total monthly premium cost, \$766, is higher than in eight of those cities, less than two, and not readily comparable with the rest.

The Fact Finder should also take into account the impact of the new wage rate and other economic items on the employees.

The Employer pointed out, as it wrote in its pre-hearing statement, that the teacher's union in Monroe pays a 10% share of the family plan premium, and 5% of the single plan. Under the City's proposal, employees can opt for Plan C and avoid paying a share of the premium costs.

Fact Finder Recommendation and Rationale:

The handwriting is on the wall. Employees in this bargaining unit are destined to share in the burden of rising health care insurance costs. The only questions are, "when?" and "how much?" The City proposes that the time is soon at hand (July 24, 2004), and the cost for the current level of coverage (Plan A) should be 20% of the premium, a dollar amount which is sure to increase each year. Even the Employer Organization's comparable data shows that employees in the region generally expect to pay 9% of the premium.

Creatively, the Employer would offer two other plans: Plan B with lesser amounts of coverage at 10% of a premium which certainly would be less than the cost for Plan A, and Plan C with minimal coverage at no employee cost. At this stage, the levels of coverage and costs are apparently unknown. In my view, this approach deserves mutual investigation by the Employer, its employees, and the unions which represent them; but a Fact Finder should not inject such a fundamental change into a first contract.

While the employees in this bargaining unit should help pay for their own health care insurance, they should not set the pattern for other units. Rather, this small unit should follow the lead of the larger bargaining units. Therefore, I will propose a kind of "most favored nation" or "me-too" arrangement with respect to sharing the health insurance premium cost. When either the police or fire department employees are required to pay for their insurance, the employees in this unit will also pick up their share of the load.

Recommendation

I recommend that the parties include in their agreement the following:

Section 1. Insurance. The City shall offer a group health care, vision, and dental care insurance to employees equivalent to that offered to other City Employees.

- a) With respect to all insurance coverage provided to Employees, the City retains the right to change insurance carriers or self-insure all or any portion of the benefits as

long as the level of benefits remain substantially the same.

- b) A difference between any Employee (or his beneficiary) and the insurance carrier(s) or the processor of claims shall not be subject to the grievance procedure provided for in the collective bargaining agreement between the City and the Union. The City will, however, designate representatives who will be available for consultation with claimant Employees (or with a designated Benefit Claim Representative of the Union), so that a full explanation may be given with respect to the basis of disposition of claims.
- c) The failure of any insurance carrier(s) to provide any benefit for which it has contracted shall result in no liability to the City or to the Union; nor shall such failure be considered a breach by the City or the Union of any obligation undertaken under this or any other agreement. Nothing in this Agreement, however, shall be construed to relieve any insurance carrier from any liability it may have to the City, Union, Employee or beneficiary of any Employee.
- d) The terms of any contract or policy issued by an insurance carrier shall be controlling in all matters pertaining to benefits thereunder.
- e) In each calendar year that an Employee elects not to be covered by all insurance plans provided by the City, he shall receive \$1,000.00 at the end of the year, provided he provides presentation of proof of coverage from another source.

Section 2. Health and Dental Care Insurance Premiums. The City shall pay 100% of the premiums for single/or family coverage for the health care and dental programs. In the event that any unit of City employees is required to pay a portion of the health care or dental insurance premiums, pursuant to a collective bargaining agreement, the Employees covered by this Agreement will immediately begin contributing an equal percentage of the premium for their health and dental insurance.

Section 3. Life Insurance. The Employer will provide, at no cost, to each regular full-time employee while employed under this Agreement, a life insurance policy having a death benefit of \$25,000 with an accidental death and dismemberment endorsement.

Section 4. Availability of Group Coverage. Group coverage shall become available to new members of the bargaining unit upon their application, after they have completed 60 days of employment with the City, as of the beginning of the following month or as soon thereafter as coverage under the City's policies can be effectuated.

Issue 3, Article 3: Union Membership & Fair Share

Union Position:

The Union proposed the following language:

Section 1. Union Membership. Subject to the provisions in Sections 4 and 5 below, all employees covered by this Agreement who are members of the Union on the effective date of this Agreement, may remain members in good standing, and those who are not members on that date may become and remain members in good standing. All employees hired after the effective date of this Agreement may become and remain members in good standing. A member in good standing is defined as an employee who tenders the periodic dues, initiation fees, and assessments uniformly required as a condition of acquiring and maintaining membership in the Union.

Section 2. Dues Check-Off. The Employer agrees to deduct Union membership dues from the paychecks of employees covered by this Agreement. This obligation shall commence upon the successful completion of the probationary period or sixty (60) days following the beginning of employment, whichever is less. The deduction shall be made from the first pay of each month. The deduction shall be at no cost to the Union and shall be in the amount certified by the Union to the Employer. No deduction shall be made from the pay of any employee unless and until the Union furnishes to the City Manager a payroll deduction form signed and dated by the employee member of the Union authorizing the deduction. The Employer agrees to furnish to the Union once each calendar month a warrant in the aggregate amount of the deductions made for that calendar month, together with a listing of the employees for whom dues deductions were made. The deduction shall be made by the Employer from each employee during the term of this Agreement. The Union shall indemnify and hold harmless the Employer from any claims made against the Employer arising out of this section.

Section 3. Fair Share Provision. It is agreed that all employees who do not join the Union or remain members in good standing shall be required to pay a fair share fee to the Union as a condition of employment. This obligation shall commence upon the successful completion of the probationary period or sixty (60) days following the beginning of employment, whichever is less. This provision shall not require any employee to become a member of the Union, nor shall the fair share fee exceed dues paid by members of the Union in the same bargaining unit. The deduction of a fair share fee by the Employer from the payroll check of the employee and its payment to the Union is automatic and does not require the written authorization of the employee.

Section 4. Bona Fide Religious Exemption. Any employee who is a member of a church or religious body having bona fide religious tenets or teachings which prohibit association with a labor organization or the payment of dues to it, shall pay an amount of money equivalent to regular Union dues to a nonreligious charity or to another charitable organization mutually agreed upon by the

employee affected and a representative of the labor organization to which such employee would otherwise be required to pay dues. The employee shall furnish written proof each month to the Employer and Union that this has been done. Employees who fail to meet this requirement shall be discharged by the Employer upon demand of the Union.

Section 5. New Hires. The Employer will notify the Union of all new hires within the unit, within ten (10) days after their having been accepted, furnishing the Union with the new employee's name, mailing address and the position for which he or she was hired.

Management Position:

The City proposed the following:

3.1 Union Members.

Upon the written authorization of the Employee, the City agrees to deduct from his pay on the second bi-weekly pay of the month, the sum certified as Union dues and deliver the sum to the Union Treasurer. Such authorization must be forwarded to the Finance Director (30) thirty days prior to the effective date. Employees desiring to withdraw their payroll deduction authorization will notify the City and the Union in writing.

3.2 Non-Members.

During the term of this Agreement, any Employee in the bargaining unit not a member of the Union shall pay to the Union a service charge which is the equivalent of that percentage of the normal dues used by the Union in administration of the Collective Bargaining Agreement.

The Union agrees to hold the City safe and harmless from any and all liabilities or damages which may arise from the performance of its obligations as specified in this article.

Findings of Fact:

The Employer objects to requiring non-members to support the Union, despite the fact that the Union won certification by a slim margin and some employees did not vote for the Union. The Employer has no objection to withholding dues for members of the Union who authorize it, but believes that non-members of the Union should have a choice of whether to support the Union financially, or not.

The Union asserts that all employees will benefit from Union representation, and they all should be required to contribute to the cost of that representation. It would not be fair to let non-members benefit at no cost when their fellow employees and members who are employed by other employers bear the cost for representing this small unit.

Fact-Finder Recommendation and Rationale:

In a previous fact finding case where I was faced with a similar issue,¹ I wrote:

¹ Princeton City School District and Princeton Association of Classroom Educators, 94-MED-03-0185, May 31, 1994.

In the opinion of the undersigned, the establishment of fair share fees requiring so-called "free riders" to reimburse a union for services it renders them is an equitable step which may benefit the Labor Organization without significant likelihood of harm to the Employer. Moreover, removing the irritant of non-paying unit members may contribute to more harmonious labor relations between these parties. I note that the Employer currently withholds from paychecks various kinds of deductions and presumably could easily accommodate one more deduction. The burden of determining the amount of the annual fair share fee and ensuring that it is properly allocated to legitimate collective bargaining purposes will fall upon the Labor Organization, not the Employer.

Because I believe that the future relationship of the parties will benefit from this clause, which is usual in contracts covering similar bargaining units in the area, I will recommend that the Union's proposed article be included in the collective bargaining agreement.

Recommendation

It is recommended that the Union's proposed Article 3, quoted in full above, be included in the contract.

Issue 4, Article 24: Sick Leave

Union Position:

The Union proposed the following:

Section 1. Sick Leave Accrual. All Employees shall accrue sick leave at the rate of ten (10) hours for each month worked, and any sick leave accrued, but not used or converted as hereinafter provided, in any year shall be accrued in succeeding years without limit.

Section 2. Use of Sick Leave. An employee eligible for sick leave shall be granted such leave with full normal pay, upon approval of his Superintendent, for the following reasons:

- a) Illness or injury of the employee or a member of his or her immediate family;
- b) Exposure of employee or a member of his or her immediate family to a contagious disease which would have the potential of jeopardizing the health of the employee or the health of others;
- c) Pregnancy, childbirth, and/or related medical conditions; and
- d) Any other reason that would qualify for leave under the Family and Medical Leave Act ("FMLA").

Section 3. Definition of Immediate Family. Immediate family includes only mother, father, brother, sister, child (including step-child), spouse, grandparent, grandchild, legal guardian or other person who stands in the place of parent, other person with the approval of the City Manager.

Section 4. Sick Leave Verification. At least thirty (30) minutes before the start of his assigned shift, an Employee shall inform his immediate supervisor or

leave a message on the supervisor's mobile telephone message service of the fact that he is reporting off sick. The exception to the foregoing is when there is a provable inability to make a telephone call. The City reserves the right to investigate any employee's absence.

Sick leave longer than three (3) working days is permitted subject to availability of accrued sick leave time and a statement from a licensed and actively practicing physician which certifies the nature of the illness and that it prevents the employee from working. Such statement must be received by the employee's supervisor no later than six (6) days after the onset of the illness. Inpatient admission to local hospital will qualify as medical notice.

An employee using sick leave is required to fill out, sign and submit the departmental form justifying the use of sick time, before receiving pay for the time used.

The falsification of the departmental sick leave form or a physician's certificate shall subject the employee to disciplinary action, up to and including discharge.

Section 5. Abuse of Sick Leave. Grounds for discipline for abuse of sick leave shall include, but not be limited to information received by the City that the Employee is, or was, during any day for which sick leave is claimed:

- a) Engaging in other employment;
- b) Engaging in an activity inconsistent with a claim of illness or injury;

Section 7. Minimum Charge or Sick Leave. Absence for a fraction of a day that is chargeable to sick leave in accordance with these provisions shall be charged in increments of not less than four (4) hours. Employees who, after reporting to work, are then sent home on sick leave shall be charged for actual time absent.

Section 8. Sick Leave Credit on Return to Service. An Employee who is laid off or on unpaid disability leave will, upon reinstatement to service, be credited for any unused sick leave existing at the time of his layoff or leave.

Section 9. Sick Leave Credit Upon Transfer. Upon transfer from one City Division or Department to another, unused sick leave shall be available for the transferred employee's use.

Section 10. Workers' Compensation. An injured employee may elect to use accrued sick leave or vacation leave prior to receiving payments from Workers' Compensation. Employees are prohibited, however, from receiving payment for sick leave or vacation while simultaneously receiving payment from Workers' Compensation. If an employee receives a Workers' Compensation check for days the employee used accrued sick or vacation leave, the employee must notify the City, endorse the check, and turn it over to the City.

Section 11. Pay for Accumulated Sick Leave. All employees, at the time of their retirement or resignation in good standing, with ten (10) or more years of service, shall receive payment based on the employee's rate of pay at retirement or resignation for accrued but unused sick leave up to the following maximum accruals:

- a) One-fourth (1/4) of the employee's accrued but unused sick leave, up to a maximum of thirty (30) days or two hundred forty (240) hours.

- b) One-third (1/3) of the accrued but unused sick leave in excess of six hundred (600) hours.
- c) In no event shall sick leave be permitted to accrue in an amount greater than eight hundred (800) hours.

If an employee is separated from employment through a removal for cause and has used sick leave to his credit, he shall not be entitled to compensation for accrued and unused sick leave to his credit at the time of separation.

Section 12. Maternity Leave. Maternity leave shall only be authorized for periods when the employee is unable to perform her regularly assigned duties due to pregnancy disability, or medical complications arising out of pregnancy. Unless the employee notifies the City Manager otherwise, she shall return to work on the sixty-first (61st) day following delivery.

Management Position:

The City proposed the same language, plus the following. In Section 4, "Sick Leave Verification," the Employer would add:

Employees may be required to furnish, upon returning to duty, a physician's certificate evidencing that the absence was for one of the reasons set forth in Section 2 above.

Sick leave taken on the Employee's scheduled shift immediately before or immediately after a holiday will require a physician's certificate before any sick leave will be paid.

In addition, the City would expand Section 5, "Abuse of Sick Leave," thus:

Grounds for discipline for abuse of sick leave shall include . . . information . . . that the Employee is:

Engaging in physical exercise or recreation;

Absent from home or place of confinement or convalescence when called or visited by representatives of the City, except in cases where the Employee can produce verification (such as a hospital or medical clinic admission or treatment slip or a receipt for the purchase of medicines from a pharmacy or reasonable explanation) that his absence was for reasons directly related to the treatment of his illness or injury.

The Employer would also add the following language:

24.6 Sick Leave Occurrences. In the event sick leave use increases by 100% of the 2002 rate, the City may implement an occurrence based sick leave program similar to that proposed by the City in the 2003 negotiation of this Agreement.

Finally, the City would change the 240 hour maximum in Section 11.(a), "Pay for Accumulated Sick Leave" to 600 hours, thus:

- a) One-fourth (1/4) of the employee's accrued but unused sick leave, up to a maximum accrual of 600 hours.

Findings of Fact:

The reference above to “an occurrence based sick leave program similar to that proposed by the City in the 2003 negotiation of this Agreement” refers to the City’s proposal to include the same sick leave provisions as appear in the police and fire employees’ collective bargaining agreements. In fact, all of the Employer’s proposals, above, which differ from the Union’s proposals, are the same or similar to language included in the police and fire employees’ contracts.

The Employee Organization stated that it proposed, essentially, the current practice regarding sick leave accrual and use. The Union rejects the City’s proposal requiring a physician’s certification for sick leave taken during a scheduled shift before or after a holiday “because it has already agreed to language whereby the City may investigate and discipline instances of sick leave abuse or fraudulent use of sick leave.” The Union argued that activity inconsistent with claims of illness or injury is grounds for discipline, so it is unnecessary to make absence from the home or place of confinement or convalescence an automatic ground for discipline for sick leave abuse.

The Union opposes the City’s proposal of an occurrence based system because there are sufficient safeguards against abuse provided already. The Union argues, “There is no justification for going to a system which punishes employees for the legitimate use of sick leave simply based upon the number of sick leave occurrences.”

The City stressed the importance of an employer’s ability to control sick leave, especially where this unit’s use of sick leave increased more than 100% from 2001 to 2002, as verified by a summary of sick hours and sick pay for those years. If the City is forced to make staffing cuts for budgetary reasons, it cannot afford to have several people call in sick on the day before a holiday, as these days are among the busiest of the year. Requiring a doctor’s excuse for sick absences the day before or after a holiday is an important tool to discourage abuse of this privilege.

Although it is important to the Employer to institute an occurrence-based system, in an effort to reach an agreement, the City has proposed a compromise which would limit the implementation of an occurrence-based system to circumstances in which this bargaining unit’s sick leave use has increased by 100% of the 2002 rate. The City

concedes that use of sick leave by employees in this unit, although double what it was in 2001, is less of a problem than it is with the police and fire employees.

Fact-Finder Recommendation and Rationale:

If there is a problem with sick leave abuse among police and fire employees, then it is appropriate to monitor that activity more closely and to discourage abuse by setting forth penalties for abuse. The City concedes that employees in this bargaining unit have not presented a problem with sick leave abuse, although their usage of sick leave has increased dramatically. In my opinion, it was not shown that there is a need to institute new controls for these employees in this contract. As the Union points out, its proposal provides the tools needed to discourage abuse, under the circumstances. Since there is no pressing need to institute a significantly different system, I will not recommend that the proposed changes be adopted.

Recommendation

It is recommended that the parties include the Union's proposed Article 24, quoted in full above, in their collective bargaining agreement.

Issue 5, Article 23: Uniforms

Union Position:

The Union's proposal reads as follows:

Section 1. Clothing. The Employer will provide uniform shirts, trousers, and jackets for each employee required to wear uniforms. Where uniforms are provided for employees, the employees must wear them properly at all times. The uniforms will be cleaned and mended at the Employer's expense. Uniforms will be supplied to each employee required to wear uniforms so that each employee has one clean uniform each work day. Each employee will be provided eleven (11) shirts and eleven (11) trousers and two (2) jackets. These uniforms are provided by a uniform company with which the City contracts. Uniforms will be replaced on an as-needed basis. Upon termination of employment, uniforms must be promptly returned, and the cost of missing uniforms will be deducted from the final paycheck.

Section 2. Work Boots. The Employer will reimburse employees in the amount of \$150.00 per year toward the cost of safety shoes/boots.

Management Position:

The City proposed the same language as in Section 1, above.

Findings of Fact:

Section 1, on which the parties agree, is a continuation of the current practice. The Union has proposed a new item in Section 2, which is reimbursement of \$150 toward the cost of safety shoes or boots.

The Employee Organization argued that employees are required to wear safety shoes or boots, and they should be part of the uniform provided them.

The City argued that there has been no problem with its current practice, that this is a new benefit which other employees do not enjoy, and it is an unnecessary expense. The Employer requested, in the event that this new benefit is supported by the Fact Finder, he should also require all employees, regardless of position, to wear safety shoes at all times.

Fact-Finder Recommendation and Rationale:

As I have observed above, a Fact Finder should not use his recommendations to force any unnecessary changes upon the parties, especially when they are bargaining their first contract. Consistent with that belief, I will not recommend inclusion of Section 2, adding work boots to the “Uniform” article.

Recommendation

It is recommended that the parties include only Section 1, quoted above, in Article 23 of their contract, “Uniforms”

Issue 6, Article 33: Duration.

Union Position:

The Union’s proposal is the following:

This Agreement shall be effective as of January 1, 2003, and shall remain in effect through December 31 2005, and shall continue thereafter for successive periods of twelve (12) months, unless either party to this Agreement on or before sixty (60) days prior to the expiration of such period, notifies the other party, in writing, of its intention to modify or terminate this Agreement

Management Position:

The City’s proposal reads as follows:

This Agreement shall be effective as of midnight on the 1st day of July, 2003, and shall remain in full force and effect until midnight on the 30th day of June, 2006.

If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than 120 calendar days prior to the expiration date of this Agreement, and no later than 90 calendar days prior to the expiration date of this Agreement. Such notice shall be via certified mail with return receipt requested or a date and time stamped letter of intent. The parties

shall commence negotiations within 2 calendar weeks upon receiving notice of intent. Failure to give the required notice shall result in the expiration of the Agreement, or its continuation for a period of 1 year, at the option of the Employer.

The parties acknowledge that during the negotiations, which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the entire understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The provisions of this Agreement constitute the entire Agreement between the Employer and Union and all prior agreements, practices and policies, either oral or written are hereby canceled. Therefore, both parties, for the life of this Agreement, voluntarily and unequivocally waive the right, and each agrees that the other shall not be obligated, to bargain collectively or individually with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement.

Findings of Fact:

The parties are in agreement that the term of the contract should be three years. The City argues that there is no need to make the contract retroactive to January because the City has voluntarily awarded to employees the raises it scheduled for 2003. The Union has proposed that the contract term be coextensive with calendar years 2003 through 2005.

Fact-Finder Recommendation and Rationale:

Inasmuch as the parties desire a three year contract term, and this contract cannot be executed until July, 2003, I will recommend in favor of the Employer's language in the first paragraph. The language proposed by the City, above, is very similar to provisions adopted in the contracts covering the City's police and fire employees. The City's language is more specific and detailed, and I will recommend that it be included in the parties' collective bargaining agreement.

Recommendation

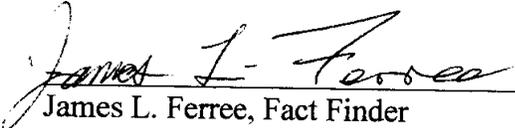
It is hereby recommended that the parties include in their agreement the "Duration of Agreement" article proposed by the Employer, above.

CERTIFICATE OF SERVICE

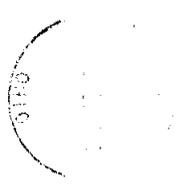
The undersigned certifies that a true copy of the foregoing Fact Finders Report regarding the findings of fact and recommendations on the unresolved issue has been sent by overnight mail carrier to the Employer's Representative Donald L. Crain, Attorney, at Frost Brown Todd LLC, 300 North Main Street, Suite 200, Middletown, Ohio 45042-1919; and to the Union's representative Susan D. Jansen, Attorney, Logothetis, Pence & Doll, Suite 1100, 111 West First Street, Dayton, Ohio 45402-1156.

A copy of the report has been sent by regular mail to Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213.

Issued at Loveland, Ohio this twenty-first day of July, 2003.


James L. Ferree, Fact Finder

James L. Ferrer
P.O. Box 4
Loveland OH 45140



Dale A. Zimmer, Administrator
Bureau of Medication
State Employment Relations Board
69 East State Street, 12th Floor
Columbus OH 43260