

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2003 DEC -8 A 9 05

**FACT-FINDING PROCEEDING
03 MED 03-0347**

DAYTON BUILDING AND :
CONSTRUCTION TRADES :
COUNCIL OF DAYTON, OHIO :
Employee Organization :
:
and :
:
CITY OF DAYTON :
Employer :

**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER
ISSUED: DECEMBER 5, 2003**

Appearances

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REPORT AND RECOMMENDATIONS

I. Procedural History

The bargaining unit in this case is comprised of all employees in the classifications of Plumber, Electronic Communications Electrician, Construction Electrician, Traffic Signal Electrician, and Electronic Electrician. The unit is comprised of approximately 37 individuals.

The collective bargaining agreement expired by its terms on June 12, 2003. In an attempt to negotiate a successor agreement, the parties met on April 16, 2003, May 12, 2003, May 20, 2003, June 11, 2003, and June 27, 2003. In addition to those bargaining sessions, the parties met in mediated sessions on August 6, 2003, August 18, 2003 and October 6, 2003.

During the course of those negotiation sessions the parties reached agreement on all but four issues.¹ The remaining unresolved issues are Article 6 Wages, Article 9 Vacations, Article 16 Insurance, and Article 27 Duration.

The undersigned was appointed to serve as the Fact-Finder on May 12, 2003. In order to allow the parties the full opportunity to successfully negotiate a successor labor agreement, the fact-finding hearing was scheduled for November 10, 2003 and said hearing was conducted. At the conclusion of the hearing, the parties agreed that the Fact-Finder's Report and Recommendations would issue on December 5, 2003.

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 effect 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. Background

This case exemplifies the struggles that many municipal governments and labor organizations are going through in 2003. The City has been open with its economic information and said information is not seriously contested by the Union.

There is a projected shortfall in the revenue stream for the City's 2004 forecast. This results in a structural imbalance whereby the City's overall personnel costs exceed the largest revenue stream assets (income tax revenue, property taxes, and Local Government Funds received from the State of Ohio).² Income tax revenue represents 65% of the General Fund revenue. The Local Government Fund represents 9% of the

¹ All Articles upon which the parties reached agreement are incorporated into this Report by reference.

² A structural imbalance occurs when the current revenue structure is not keeping pace with the growth in expenditures.

General Fund Revenue and Property taxes account for 5% of the General Fund Revenue. The disparity in revenues and expenditures is projected to grow in 2004.

The projected shortfall was not caused by a single decision, which plunged the City into the red. It is a product of many negative factors converging. From 1991 through March of 2001, the national economy experienced unprecedented growth. The national job market increased by 22%. However, the Greater Dayton and Springfield region lagged significantly behind the national increase with a growth rate of 8%. The City lagged even further behind the national trend and grew 3%. Thus, Dayton either failed or was unable to capitalize on the 10 years of growth realized elsewhere in the country. The inability to grow the job market had a direct impact on the City's ability to grow the income tax revenues.

To further complicate the situation, some high paid manufacturing jobs were lost and some were not replaced. Once again, impacting the City's ability to grow the income tax revenues.

Between 1996 and 2001, the revenues for the City grew 2.8% or by \$22,600,000.00 while expenditures grew 4.2% or by \$30,000,000.00. Thus, ingredients were present to create a structural imbalance.

For the past two years the State economy has experienced an economic downturn so severe that the State funding provided through the Local Government Fund has been capped and frozen. This State funding reduction has negatively impacted a significant portion of the General Revenue Fund.

Of course, one cannot ignore the negative impact that the 9-11 terrorist attack had on our economy and the ability to earn through investments. Finally, add to this mixture

of negative factors that the country went through a recession between January and November of 2001 and the fact that it has been slow to readjust.

The City has asserted an inability to pay, which has manifested itself in the City's proposal in this Fact-Finding. With respect to wages, the City is proposing a blend of a small base rate increase in the first and third years of the contract coupled with a "signing bonus" in those years. The City also has proposed a wage freeze in the second year of the contract. The City is also seeking to elongate the pay band within which bargaining unit members would fall by adding steps to the advancement through the band.

Concerning health insurance premiums, the City is proposing a 50% cost sharing of increased health premiums. This proposal is in addition to the 10% of the health care premium already paid by members of the bargaining unit. Also, the City is seeking to create a health care insurance system that would provide new hires with single person coverage and not family coverage.

Vacation time is currently earned at the rate of eight hours per month of service. The City proposes to reduce the rate of earning vacation time for new hires to four hours per month of service.

These are most of the pivotal issues that have arisen between the parties to this Fact-Finding. Given the background illuminated above, the conclusion could easily be reached that the City's proposals are reasonable. However, the analysis cannot stop here.

It must be noted that the Building Trades are the first group to bargain in the negotiations cycle between the City and its Unions (FOP, IAFF, and AFSCME). Moreover, the Building Trades group is the smallest bargaining with which the City must

contend.³ Thus, there is a significant amount of pressure on the Building Trades to hold fast to its position in bargaining for fear of compromising in a manner that serves to impact their members disproportionately.

It is the City's view that cost containment must be achieved in all of its negotiations, and it must start with the Building Trades. To do otherwise would provide the larger bargaining units with some leverage by way of internal comparables. The City pledges the cost containment message and inability to pay plea will be front and center in upcoming negotiations with the other Unions. However, the City candidly admits it cannot guarantee results, particularly because the safety forces have the ability to invoke conciliation.

The Union herein is quick to make several points in response to the City's position.

- (1) The City adopted a similar stance in the last round of negotiations, and the Building Trades agreed to pay a percentage (5%, 7.5%, and 10%) of the health care premiums. As a product of their negotiations, the other units were required to pay \$10.00 per month for single coverage and \$20.00 per month for family coverage. In other words, the Building Trades bargaining unit was disproportionately impacted by the agreement reached in bargaining. Hence, this bargaining unit is leery of City's assertions.
- (2) Each of the other labor organizations received a 3.25% wage increase in 2003 and in 2002 so did "mid-management".⁴

³ The Building Trades bargaining unit is composed of 37 positions of which 33 are currently filled. The AFSCME unit is made up of 1100 members. The FOP group is composed of approximately 420 safety personnel and the IAFF represents approximately 365 employees. Interestingly enough, there are roughly 480 "mid-management" employees employed by the City.

(3) Finally, only 11 of the 33 members of the bargaining unit are paid from the General Revenue Fund. The remaining 22 employees are paid through the Water Fund or the Aviation Fund. Any increase in the base wage rates for those compensated out of the General Revenue Fund will have little, if any impact on the projected shortfall. Moreover, the Water Fund is not experiencing the type of shortfall that the General Revenue Fund is experiencing. While the Aviation Fund's bond rating has dropped to a BBB+ rating, it is still operating in the black.

The Union is proposing a 3.25% base rate wage increase for each year of a three-year contract and is in favor of maintaining the status quo with respect to steps within the pay band. The Union also seeks to cap the health care insurance contribution to premiums at \$10.00 for single coverage and \$20.00 for family coverage. The Union also rejects any system which provides only single coverage for new hires. Similarly, the Union is unwilling to accept a two tier vacation system such as the one proposed by the City.

All of the positions taken by the parties and the rationale offered to support their respective positions must be balanced against one another in order to create a Report that provides the City and the Union with a real opportunity to end bargaining in a mutually agreeable fashion.

⁴ The FOP contracts expire on May 18, 2004. The IAFF contract expires in November of 2004 and the AFSCME contract expires in 2005.

Article 6—Wages

Employer's Position

The City, “because of a chronic structural imbalance is proposing, as its last best offer” a base rate increase of 2% coupled with a 1.25% signing bonus effective on June 12, 2003. The City also proposes a wage freeze for the second year of the agreement. Effective June 12, 2005 the Employer proposes a 1.25% base rate increase coupled with a 2.00% signing bonus. (The Employer has reversed the amounts of the base rate increase and signing bonus in year three of the contract because projections indicate that the income tax revenues will be down another 4.4% in 2005.)

In support of its position on this issue, the Employer emphasizes that it has suffered a “significant loss in revenues from income tax collection (est. \$6.5 million), property tax revenue, and local government funds. It cannot afford any more than offered. The only reason it can offer these wage increases is because part of the increases are bonuses, which do not increase the basis.” The City’s records were open to all the Unions with whom the City negotiates. The data was reviewed by two of the Unions independently and there does not appear to be a disagreement on the economic crisis facing the City of Dayton.

Union's Position

The Union proposes a 3.25% base rate wage increase in each year of a three-year agreement. The increase being retroactive to June 12, 2003, the second increase coming on June 12, 2004 and the final increase attaching on June 12, 2005.

It is the position of the Employee organization that every other bargaining unit in the City received a 3.25% wage increase at various times in 2002 and/or 2003. AFSCME

is scheduled to receive a 3.25% increase in June of 2004, while the FOP units and the IAFF are scheduled to begin negotiations in 2004. Thus, the wage increase sought in this case is both reasonable and justified based on internal comparables.

Additionally, the City, “after declaring the existence of a financial crisis, gave 3.25% wage increases to exempt staff in 2002.” If the City desires to implement a wage proposal that includes base rate increases, signing bonuses, and a second year wage freeze in an effort to alleviate its financial crisis, it should begin that process with the safety forces.

Recommendation

In considering a case such as the one presented here, it is incumbent on the undersigned to take into account the interest and welfare of the public and weigh the ability of the public employer to finance and administer the issues proposed. Based upon the evidence and information submitted at the Fact-Finding, it is evident that the City of Dayton must come to grips with and correct the structural imbalance that currently exists in the General Revenue Fund (i.e., increases in expenditures outstripping growth in revenues). Managing or controlling personnel cost increases is a significant component of any effort to correct the structural imbalance. A collectively bargained for wage increase is one element of personnel costs that is subject to scrutiny in any effort to correct a structural imbalance.

As noted above, the Union proposes a 3.25% base rate increase for each year of a three-year contract. This proposal is based, in part, on internal comparables of 2002, 2003, and 2004 wage increases for other City bargaining units. The Union’s proposal is also based on the fact that the City awarded its exempt staff a 3.25% wage increase in

2002 and the assertion that the City should begin its effort to alleviate its financial crisis in bargaining with the safety forces.

Generally, internal comparables have a significant impact on a Fact-Finder's analysis of wage increase proposals. However, in the present case the City's financial situation cannot be ignored. In other words, the City's ability to finance and administer the recommendation must be given play.

Under the circumstances it is recommended that the bargaining unit member's wages be increased as follows:

Year One—2003 to 2004

Retroactive to June 12, 2003 it is recommended that the bargaining employees receive a base rate increase of 2.00%, plus a 1.25% "signing bonus" payable immediately upon ratification of the contract.

Year Two—2004 to 2005

Effective June 12, 2004 it is recommended that the bargaining unit employees receive a \$1000.00 lump sum.⁵

Year Three—2005 to 2006

Effective June 12, 2005 the bargaining unit employees receive a 2.00% base rate increase, plus a 1.25% lump sum.

The City offered data in the hearing that demonstrated that cost of its wage proposal was \$264,137.06 and the Union's proposal will cost \$496,971.93 to fund over three years. A 2.00% base rate increase in contract year one amounts to a \$49,881.92 increase and the lump sum or "signing bonus" proposed costs \$31,176.00, which is the same as the City's proposed expenditure. The lump sum bonus recommended in year

two of the contract will cost \$33,000.00, whereas the City proposed no additional expenditure for wages, save the roll-up cost. The \$33,000.00 expenditure for the lump sum that is recommended is a one-time expense for the Employer because it is not factored into the base rate. The 2.00% base rate increase in year three of the contract, plus a 1.25% lump sum payment recommended costs the City about the same as its proposal.

This recommendation is roughly \$33,000.00 more expensive to the City during the life of a three-year contract. It is within the Employer's ability to finance and provides a measure of expenditure containment for the City over the next three years.⁶ The recommendation also provides the Building Trades employees with a measure of parity with other bargaining units in the City who received 3.5% wage increases in 2003.

Article 6—Addendum (Steps)

Employer's Position

It currently takes a new hire 3 ½ years to go from the bottom of the pay band to the top of the pay range. There are four incremental steps in the progression. The City proposes to modify the wage addendum to reflect a 10-step progression through the pay band rather than the four-step progression. The impact of the proposal would be to extend the progression time from 3 ½ years to 9 ½ years.

“This proposal will not affect any current employee. It will slow down how fast a new employee makes it to the top of the pay band. All other Employee Organizations have more steps than four.”

⁵ Neither the “signing bonus” nor the “lump sum” payments are to be included in the base rate.

⁶ The undersigned is not unmindful that the roll-up cost will be increase slightly, however that matter can be dealt with directly by the parties in the next round of negotiations.

Union's Position

It is the Union's position that the step progression within the wage band established for the Building Trades employees employed by the City of Dayton should remain as it appears in the current collective bargaining agreement. According to the Union:

“Employees within this bargaining unit, unlike other bargaining units, are journey level certified skilled tradesmen at the entry level. Unlike other bargaining units within the City, these members have numerous years of training and work experience prior to obtaining employment with the City. The fact that it takes the City a relatively short time to perfect a member's skills to provide exceptional service to the taxpayers of the City is reflected in the minimal number of steps set forth in the pay grid.”

Moreover, any contention by the City that increasing the number of steps within the progression is essential to cost containment is illusory in light of the small size of the bargaining unit and the current hiring freeze.

Recommendation

It is recommended that the status quo be maintained with respect to the number of steps in the wage band progression. On balance the Union's position is more persuasive. The Union's proposal does not serve to increase the expenditures and, absent any realistic prospects for hiring new employees in the next 2 ½ years serves to contain a portion of the personnel costs at the current level. The City realizes no immediate cost savings from implementing additional steps in the wage band progression. Additionally, given the size of the bargaining cost containment benefit is minimal. No significantly compelling reason

exists to risk experiencing the work place divisiveness associated with the creation of what is in effect a two-tier wage structure.

Article 9—Vacation

Employer's Position

The Employer seeks to modify the number of vacation hours earned for each month of service from eight hours to four hours. This proposal would only apply to newly hired employees (effective June 11, 2003). This proposal represents one element of several advanced by the City to provide a vehicle to correct the chronic financial structural imbalance. Under this proposal, any employee hired after June 11, 2003 would earn four hours of vacation time for each month of service or in a year's time six days of vacation instead of 96 hours of vacation or 12 days of vacation. In conjunction with its proposal to reduce the vacation accrual factor, the Employer proposes to provide an additional supplemental day at the first level.

Union's Position

Not surprisingly, it is the Union's position that the status quo should be maintained with respect to vacation time earned. According to the Union, a two-tier system is not conducive to teamwork and can only lead to future resentment among co-workers. Furthermore, the City is under a hiring freeze and the "savings is illusory." Given the size of the bargaining unit, any savings projected from this contract change would be of little value in the larger scheme of things.

The Union also premises its position on internal comparables and the fact that no other bargaining unit in the City has a two-tier vacation system.

Recommendation

It is recommended that the status quo be maintained. Once again, on balance the Union's position resonates with the undersigned. The City does not realize an immediate reduction in expenditures as a result of the implementation of its proposal. Given the hiring freeze, the lack of realistic hiring possibilities in the very near future and the size of the bargaining unit, the savings would be minimal. In addition, maintaining the status quo for three years under the circumstances presented herein provides a level of consistency with respect to the vacation expenditure.

On the other hand, the risk is inherent in developing a two-tier system for resentment and divisiveness to surface in the work place. The Employer's argument in this regard is not compelling to overcome the inherent risk.

Article 16—Insurance

Employer's Position

"The Employer seeks to require current employees to share in the escalating cost of health insurance by requiring them to 50% of any increased premiums from the **2003** rate in addition to their 10% contribution for single and family healthcare coverage. This would start June 11, 2004."

Health care costs are skyrocketing in both the public and private sectors. The City cannot afford to absorb those premium increases.

In 2001 health care premiums increased 15.2%. In 2002, the health care premium increase ranged from 15.8% (PPO) to 22.9% (HMO). Similarly, in 2003, health care premiums increase from 16.8% (PPO) to 13.8% (HMO). The total increase in premiums over the life of the collective bargaining agreement was 47.8% (PPO) and 51.9% (HMO).

All employees should share equally in the increased costs associated with health care premiums. Doing so will reduce the expenditure on health care by the City and will serve to encourage the employee organizations to “allow the Employer to negotiate benefits with the insurance carriers when renewing the policy to try to keep the increases down. For example, allowing the co-pays to be increased slightly would allow significant savings. If the Employee Organizations do not want to allow negotiations on benefit levels, then it is only equitable they share in the cost of increases in premiums.”

Union's Position

It is the position of the Union that a specific dollar cap be placed upon the employee contribution health care premiums rather than a percentage. The Union asserts that its bargaining unit members should pay no more for a common benefit that members of the other bargaining units in the City. The other bargaining units contribute \$10.00 per month toward the premium cost for single coverage and \$20.00 per month toward premium cost for family coverage.

This bargaining unit was the first in line during the last round of collective bargaining to agree on an uncapped contribution to the increased cost of health care premiums. In the first year of the current agreement the employees agreed to pay 5% of the premium. In year two the percentage increased to 7.5% and in year three it climbed to 10%. The Employer's stated intent at the time was to secure agreements from the other bargaining unit for similar cost sharing. That did not occur.

The employees in this bargaining unit have borne a disproportionate contribution to cost for three years now. It is unrealistic to expect the Building Trades members to

lead the cost reduction effort without any protection, and the Union does not see what the City has done with exempt employees as a guarantee or other form of protection.

Recommendation

It is recommended that the 90%/10% premium contribution ratio be maintained and the employees be required to contribute 10% of the effective each year of the contract and the Employer's premium contribution rate be 90%. The Building Trades relied upon management's stated intent to convert employee premium contributions to a percentage of the annual premium in the last round of bargaining. On the strength of that representation, the Building Trades unit agreed to an uncapped percentage of annual premiums as the calculation for determine employee premium contributions. In the third year of the agreement, the employee contribution rose to 10% of the annual insurance premium. The other units did not convert to an uncapped percentage of annual insurance premiums. Rather, their contributions are capped at \$10.00 single coverage and \$20.00 for family coverage.

As a result, while the other bargaining unit members were paying between 2.6% and 3.8% of their insurance premiums in 2003, the Building Trades members were paying 10% of their insurance premiums. Assuming a 15% premium increase in 2004, members of the other bargaining units will be contributing between 2.4% and 3.3% of the annual premium rate while the Building Trades unit members contribute three to four times that amount.

By making this recommendation the uncapped percentage concept has been reaffirmed. It is unrealistic to believe that the City will convince the other Employee Organizations to accept the 10%/50% insurance premium contribution. It would do well

to persuade the other units to accept an uncapped 10% employee contribution to insurance premiums.

The internal comparables do not justify recommending the Employer's proposal, however, they do not dictate the acceptance of the Union's proposal.

It is also unreasonable to expect members of the Employee Organization to continue to bear a disproportionate amount of health care costs. To adopt the Employer's proposal would be to further increase the disparity between contribution levels among City employees, which is a result that cannot be countenanced.

It must be noted that the other bargaining units have contract language in their collective bargaining agreements with the City which prohibits health care plan redesign absent mutual agreement. The Building Trades contract contains no such prohibition. The City recognizes that plan redesign⁷ can produce significant cost savings. Assuming *arguendo*, that the City is able to secure plan redesign measures with the other units, those measures could be implemented with this unit and yield further cost savings.

**Insurance for Employees Hired or Promoted After
June 11, 2003**

Employer's Position

It is the Employer's proposal to limit health insurance to single person coverage only for all employees hired or promoted after June 11, 2003. In other words, the City will not pay for family member insurance coverage. However, the employee may elect family coverage, but must pay the difference in health insurance premiums between family coverage and single coverage.

⁷ Plan redesign is one of the reasons offered by the City to support its proposal.

In addition the new employee would pay the same 10% monthly premium as current employees, as well as paying 50% of the increased premium. The Employer's proposal does not allow for dental coverage for new employees.

Health care benefits would be subject to coordination, subrogation, and unemployment compensation. Moreover, the failure of a carrier to pay a claim would not be subject to the grievance-arbitration procedure. The Employer, however, would pay the full cost of \$25,000.00 group life and accidental death and dismemberment insurance.

Union's Position

For all of the reasons articulated in addressing the two-tier wage and vacation proposals, the Union objects to this proposal. The Union simply objects to any differentiation between current employees and new hires.

Recommendation

It is the undersigned's recommendation that the Employer's proposal be rejected and that the parties consider the recommendation above as the appropriate modification of Article 16. The proposal does not implicate immediate savings by the City and it creates a system which surely will deter qualified journey persons from seeking employment with the City. In a day and age when many individuals accept employment largely because health coverage is provided, it is unrealistic to think that skilled craft persons could be persuaded to join the ranks of the City's employees. These skilled Building Trades employees provide value services to the citizens of this community and it would not serve the citizens well to create a system that cannot provide the level of skills the community deserves and expects.

Article 27—Duration of Agreement

Recommendation

There is essentially no disagreement about this provision of the collective bargaining agreement. Both parties would agree to a three-year term effective June 12, 2003 and expiring at midnight on June 11, 2006. Therefore, a three-year contract term is recommended.

Respectfully submitted,



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Fact-Finder
December 5, 2003

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