FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
March 15, 2005

In the Matter of: :

:

AMERICAN FEDERATION OF : **CASE NO. 03-MED-07-0774**
STATE, COUNTY, MUNICIPAL :
EMPLOYEES, OHIO COUNCIL 8, :
LOCAL 2982, AFL-CIO :
EMPLOYYE ORGANIZATION :

:

and :

:

CITY OF TIPP CITY, OHIO :
PUBLIC EMPLOYER :

APPEARANCES

For the Union,
William Sams, Staff Representative
Jerry Gee, President
Ken Putnam, Vice President

For the City of Tipp City,
John J. Krock, Principal Representative, Clemans, Nelson & Associates, Inc.
David Collinsworth, City Manager, City of Tipp City
Brad Vath, City of Tipp City
Scott Vogel, City of Tipp City
Tanya Nardin, Clemans, Nelson & Associates, Inc.

Fact Finder: Howard Tolley, Jr.

Introduction

In negotiations for a three year successor agreement to begin December 1, 2003, the parties were unable to agree on four economic issues, and they scheduled a March 11, 2004 fact-finding hearing. The Bargaining Unit includes 21 positions (20 current employees) classified as laborer, groundman, utility plant operator, maintenance specialist, tree trimmer, apprentice and journeyman lineman with the following profile: 10 electric, 4 water & sewer, 4 streets, and 3 parks. Tipp City also employs 15 police officers represented by the FOP and another 29 unrepresented employees in a total payroll of 65. The parties exchanged and submitted pre-hearing position statements that summarized their proposals, and they prepared supporting documents for presentation at the hearing to address the criteria established by the Ohio Public Employees Bargaining Statute in Rule 4117-9-05:

1) Past collectively bargained agreements, between the parties

2) Comparison of 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, and 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; and,

6) Such other actors, 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."

Mediation and Hearing: March 11, 2004, Tipp City Municipal Building

Prior to convening a hearing on the record to consider the supporting documents and to hear testimony, the Fact Finder mediated negotiations that began at 10 a.m. and concluded without success at 10:45 a.m. Health care insurance was the major issue. The fact-finding hearing was then conducted from 10:45 until 12:15. The fact-finder appreciates the courtesy extended by the parties and their professional approach to the hearing.

Summary of Budget Data Presented by Tipp City Regarding Ability to Pay

The employer offered a power point presentation showing a projected two-thirds reduction in interest income resulting from the economic downturn that contributed to operating deficits for 2003 and 200, and a corresponding one-third decrease in reserves. Revenue growth declined from 9% per year in the 1990s to 1.6% in 2004, while General Fund expenditures increased 3.3% per year for 2001-2004. Health care insurance costs increased 29% in the two year period 2002 and 2003 with a 15% increase forecast in 2004. In 2004, threatened state budget cuts to the Local Government Fund and capture of municipal kilowatt-hour receipts could further reduce operating revenue. General Fund Revenue for FY 2004 is projected to be only 1.6% higher than in FY 2001. Replacements have not been made for a police officer on military leave and zoning administrator. The City plans three major capital projects for parks, electric and water, funded in part by a new ten year 0.25% levy. Water fund and electric rates have been increased, and the city is delaying street repair and equipment replacement. An evaluation of Fire & EMS may lead to a levy in November 2004.

Issue 1: Article 16 – Call-In

AFSCME Position:

The employee organization proposes an increase from \$2.60 to \$3.10 per hour for all hours worked for the entire week an employee is required to be on call with a pager. Two prior agreements provided periodic increases, and the \$2.60 per hour rate has been in effect for three years.

Employer Position:

Tipp City seeks to maintain the \$2.60 per hour rate in the successor agreement. The employer provided data from nine comparable cities--three offered no call-in pay, five paid less than Tipp City and only one, West Carrolton, paid more (\$2.82 per hour). The employer also noted that in the prior agreement the employer granted a 41% increase in call-in compensation, and that the newly proposed increase would be an additional 19%.

Discussion:

The fact-finder concludes that periodic increases to call-in pay are appropriate. After annual increases averaging 7% from 1991 to 1995, the rate was fixed at \$85 per week for all three years of the next agreement. No further increase was made for 1997-2000. The 2000 change to a \$2.60 per hour rate computes to a 41% increase after six years when the \$85 weekly rate was unchanged. If maintained for the next three-year agreement, the \$2.60 hourly rate would also remain in effect for a total of six years. The fact-finder recommends increases once every three years, rather than annually or in every other agreement. Based on the data from comparable employers, the fact-finder considers excessive the \$3.10 per hour rate proposed by the employee organization and recommends an increase to \$2.75 per hour for the 2003-2006 agreement.

Suggested Language:

Section 16.4 Replace ~~\$2.60~~ per hour with **\$2.75** per hour.

Issue 2: Article 17 – Compensation

AFSCME Position:

The employee organization seeks increases in line with the April 2003 city/FOP agreement and with the past history of city/AFSCME agreements.

December 1, 2003	3.5% increase
December 1, 2004	3.5% increase
December 1, 2005	3.5% increase

Tipp City Position:

At ratification, 2004	3.0% increase
1st December pay, 2004	3.0% increase
1st December pay, 2005	3.0% increase

The employer presented data indicating that in nine comparable cities the average wage increases for 2003 to 2005 were 3%, and that the base rate for a Tipp City Line Worker is at or near the top. In the other classifications, the base rate for Tipp City employees represented by AFSCME was less than the average compensation in the other nine cities.

Discussion:

During their prior three-year agreement the AFSCME employees received a total of 10% in increased compensation. Despite the economic downturn and budget difficulties confronting the city, FOP employees in April 2003 were granted a 10% increase over three years, 35% in 2003 and 2004; unrepresented employees received a 3.5% increase in both 2003 and 2004, completing a 10% increase over three years.

Retroactivity. In accord with standard practice in cases of good faith bargaining and the prior history of agreements between the parties, the fact-finder recommends that wage increases take effect retroactively to the November 30, 2003 conclusion of the prior agreement.

Recommendation:

3.0% increase retroactive to December 2003
3.5% increase effective in December 2004
3.5% increase for December 2005 through November 30 2006

Issue 3: Article 19 – Insurance

AFSCME Position:

The employee organization proposes a continuation of the current 10% premium contribution by the employee, the same rate agreed to for the FOP in April 2003 and the same rate paid by all unrepresented employees.

Tipp City Position:

Proposed language for the agreement entitles AFSCME employees to the current 10% premium cost only until the date all non-bargaining and Administrative employees begin to pay a higher percentage, and AFSCME members would pay the same percentage rate as those groups.

During years when general fund revenue significantly improved, all city employees received a reduction in insurance premium contribution rates from 20% to 15% and then from 15% to 10%. Now that health care costs are increasing at a rate of 15% a year in a time of economic downturn, the city wants employees to resume paying a greater share of the premium. The city's representatives indicated that the employee share would be no more than 15% and would most likely take effect in September 2004 when the plan is renewed. A fact-finder in the 2003 FOP negotiations advised the employer that prior to increasing the insurance premium rate for police, the city would need to increase it for other employees. After the AFSCME and unrepresented employees pay a 15% share, the city plans to implement that same rate in the next FOP contract.

The city provided the 2002 SERB Report on Public Sector Health Insurance Costs and data from nine comparable cities; five had employee contribution rates of 10% or less, with one scheduled to increase to 12% over a two year period.

Discussion

The fact-finder spent considerable time and effort making calculations based on the data provided, but missing data prevents conclusive analysis. Based on 655 survey returns from 1374 employers, the 2002 SERB Report warns that information about monthly and annual costs for all health care benefits may not be statistically valid due to small sample size. Most of the tables exclude cities that pay 100% of the premium. The report gives cost information, but provides insufficient data to compare health care benefits that vary by employer. The reported average cost per employee has limited comparative value because premiums are considerably higher for those electing a family plan, and the report doesn't correct for disparities in the number of employees taking single and family coverage. The Report is helpful for a comparison of 2001-02 costs, but the soon to be released 2003 Report will provide more current figures.

Based on the incomplete SERB data reported below, the fact-finder concludes that health care premium costs for Tipp City are below the average for comparable Ohio public employers. (In computing the average annual cost for Tipp City, the fact-finder used for the family plan $9,555.60 based on employer data provided at Tab 6c, rather than the $9,5833.44 provided at Tab 7).

Table 5 Monthly & Annual Costs -- All Health Care

	MonthlyPremium		Annual Cost
	Single	Family	Average
State wide	$339.66	$828.79	$7,992
Cities under 25,000	$319.55	$813.78	$8,272
Dayton Region	$327.50	$804.45	$7,871
50-99 Employees	$338.00	$841.56	$7,573
Tipp City	$290.89	$796.34	$7,433

Table 7 Health Care Costs by Plan Type

	TotalPremium		Annual Cost
	Single	Family	Average
All Plans	$339.66	$828.79	$7,992
Consortium Plans	$357.57	$844.40	$8,384
Tipp City	$290.89	$796.34	$7,433

The parties have a mutual interest in negotiating reductions with health care providers. AFSCME has thirteen employees who elect family coverage, two thirds of the bargaining unit members; those with only a single dependent might obtain lower premiums than co-workers needing coverage for families of three or more. Other savings might be possible without reducing coverage through customizing limited cafeteria-style choices on different levels of coverage for dental (with or without orthodontia) or other benefits, or by offering two plans, one at a reduced premium with fewer network providers and different rates for out of network service.

Future health care cost increases are unpredictable, placing both parties at risk. The employer has proposed unacceptable language for Article 19 that places no limit whatever on the contribution employees might be required to make in the future. Based on the 2002 SERB Report, the fact-finder concludes that restoring the prior 85% employer -- 15% employee allocation would be out of line with agreements in comparable cities. Table 6 reports that 43% of medical plans require no employee contribution, and 64% of the reporting cities contribute more than Tipp City's 90% rate. 76% of reporting Ohio cities contribute more than the 85% rate proposed by Tipp City.

The FOP enjoyed a reduction to the 10% contribution rate prior to employees represented by AFSCME, and police officers will continue to pay that 10% premium following any increase implemented for AFSCME and unrepresented employees. It appears unreasonable to expect AFSCME to receive a benefit reduction prior to unrepresented employees. When implementing changes to pay at termination, Tipp City began with the unrepresented employees in February 2002.

If after consortium negotiations with the provider, the next health plan scheduled to begin in September 2004 requires the employer to increase employee contributions above 10%, then the fact-finder recommends that the higher rate for AFSCME members begin no earlier than December 2004 in conjunction with the annual salary increase. Based on the 2002 SERB Report data presented below, the fact-finder recommends an increase in the AFSCME employee premium contribution of no more than 2% through November 2006 and at no time greater than any increased contribution previously implemented for unrepresented employees.

Table 5	Employee Premium Contributions			
	Total Premium		Average% Contribution	
	Single	Family	Single	Family
All Plans	$35.44	$97.09	12%	13%
Cities under 25,000	$25.17	$69.25	8.8%	9.2%
Dayton Region	$34.35	$101.13	11.6%	13.6%
Tipp City	$29.09	$79.63	10%	10%
Tipp City Recommended	$34.90	$95.56	12%	12%

Suggested Language: Article 19 – Insurance Section 19.1

The employer shall provide to all bargaining unit employees a group hospitalization/major medical insurance plan including $40,000 ~~$35,000~~ term life insurance for those employees electing to accept such coverage. **Effective with the signing of this agreement, the Employer shall pay 90% of the premium costs and each employee will pay 10% of the premium costs until November 30, 2004. At any time after that date the Employer may reduce its contribution to no less than 88% of the premium costs, and the employee may be charged no more than 12% of the premium costs for the duration of this Agreement, provided that AFSCME bargaining unit employees never pay more than the percentage premium cost contributed by non-bargaining and Administrative city employees.** Employees shall be required to complete an authorization for payroll deduction in order to be covered by the plan. The level of benefits shall not be changed during the term of this contract unless the City and the Union meet and confer in compliance with 4117.08 of the Ohio Revised Code.

Cost analysis:

The fact-finder's recommendations are based on his calculation of the savings for the city and the increased expense to individual AFSCME employees by using current data that will change after a new health care plan takes effect in September. Both parties will make their own calculations based on their best estimates. The employer's costs and revenues are contingent on developments that are uncertain. It appears that Tipp City currently pays less for health care than comparable public sector employers, but the fact-finder nevertheless recommends during a time of budgetary constraint an increased employee contribution up to rates comparable to other public sector employees. If health care expenses exceed ability to pay, the employer by invoking Article 19 can meet and confer in order to reduce the level of benefits.

With a single rate of contribution for all employees, those electing the considerably more expensive family plan experience the greatest cost increase when contribution rates go up. Individual employee's ability to pay increased health care premiums also vary based on whether they earn well above or below the average hourly pay rate of $19.56 per hour, $40,678 per year. The fact-finder could not envisage recommended language that would more equitably share the increased health care expense, but AFSCME might identify agreements with other employers that creatively remedy disparities within a bargaining unit caused by a uniform contribution rate.

The parties have a common interest in finding mutually beneficial arrangements to reduce or at least moderate future increases in health care premiums. The fact-finder encourages special effort prior to the implementation of the next plan in September.

Issue 4: Article 25 – Pay at Termination

AFSCME Position:

The employee organization wants to maintain the current agreement providing that upon termination or retirement, employees may convert unused sick leave at graduated rates depending upon the length of service, and objects to reducing benefits for those hired after January 1, 2004.

Tipp City Position:

The employer has proposed

1) eliminating any converted sick leave pay at termination for the first ten years of service, and thereafter only providing for such pay at termination in cases of retirement, eliminating the benefit for both voluntary and involuntary termination.

2) For employees hired after January 1, 2004, reducing the maximum payment at retirement from 180 days (1440 hours) to 120 days (960 hours).

Data from eight comparable cities indicate that half allow conversion only at retirement, while the other four also provide the benefit at termination.

The employer notes that the City has implemented #2 for both the FOP and all unrepresented employees. Data from eight comparable cities indicate that six offer less than Tipp City, ranging from 520 to 1,200 hours. State law requires only half of the hours that Tipp City allows to AFSCME members.

Discussion:

The employer's first proposal would make the AFSCME agreement inconsistent with the termination benefits for FOP and unrepresented employees. Currently all three groups have identical termination benefits, and the City failed to offer the fact-finder a persuasive rationale for reducing the AFSCME sick pay at termination provisions.

The employer's second proposal would apply to new AFSCME members the reduced benefit provided to new employees in the other two groups. No existing employees would have their benefit reduced. The change would provide a uniform benefit for all recent hires in Tipp City while bringing into AFSCME the same two tier benefit that exists in the FOP.

The fact-finder recommends the employer's proposal #2 for the following reasons. The Tipp City conversion rate of 75% after 20 years of service is considerably higher than the rate in six comparable cities, and 960 hours considerably exceeds the hours provided in six comparable cities. In the 1994 AFSCME agreement the parties agreed to 120 days (960) hours on retirement at twenty years.

Suggested Language: Article 30 – Pay at Termination Section 30.2

TIPP CITY SERVICE YEARS	CONVERSION RATE	MAXIMUM PAYMENT
No change until		
Termination or Retirement with twenty (2) or more years of service,	75%	180 days (1440 Hours)
NEW: Employees hired after Jan. 1, 2004	75%	120 days (960 Hours)

Conclusion:

If the parties find any substantive error in this report needing correction, a conference call should be arranged to discuss the concern, and a request may be filed with SERB for authorization to adjust the report [O.A.C Rule 4117-9-05(L)]. The Fact Finder appreciates the professional approach by all individuals involved in the process and their exemplary conduct.

Professor Howard Tolley, Jr., University of Cincinnati Howard Tolley, Jr.
March 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the above and foregoing Fact Finding Report has been served BY REGULAR MAIL to William Sams, Staff Representative, AFSCME, Ohio Council 8, 15 Gates St., Dayton, OH 45402; and BY REGULAR MAIL to John J. Krock, Vice President, Clemans, Nelson & Associates, Inc. 5100 Parkcenter Ave – Suite 120, Dublin, OH 43017-7563 on this 15th day of March, 2004.

Howard Tolley, Jr.

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