

FACT-FINDER REPORT

STATE EMPLOYMENT
RELATIONS BOARD

2004 JUL 25 A 10:07

Before the
State Employment Relations Board
State of Ohio
July 23, 2004

In the Matter of:

INTERNATIONAL UNION of
OPERATING ENGINEERS, LOCAL 20
(AFL-CIO)

Employee Organization

and

CITY of HAMILTON, OHIO

Employer

Case No. 04-MED-02-0127

I. HEARING:

DATE: July 21, 2004, 10:00 a.m.

LOCATION: Conference Room, 7th Floor, One Renaissance Center
Hamilton, Ohio

ATTENDANCE:

For the Employee Organization:

John Gray, Business Manager
Ken Engle, Bargaining Committee Member
Richard Hurr, Bargaining Committee Member
Tim Price, Bargaining Committee Member

For the Employer:

Timothy G. Werdmann, Assistant Law Director
Colleen H. Taylor, Assistant Law Director

Fact Finder:

James L. Ferree

INTRODUCTION:

The City of Hamilton, Ohio (herein called "the Employer" or "the City"), population about 60,000, operates public utilities, including the Hamilton Water Plant, Wastewater Treatment Plant, Electric Power Plant, Greenup Hydroelectric Plant, and the Division of Gas and Water Distribution, wherein the 97 hourly employees are represented in

collective bargaining by Local 20, International Union of Operating Engineers, AFL-CIO (“the Employee Organization” or “the Union”). The Employer and the Union are parties to a collective bargaining agreement effective from September 1, 2001 through August 31, 2004. Article XII, Section 8. C. of that labor contract provides for reopening the contract to discuss the terms of health insurance in the years 2001 or beyond, which the Union exercised in January, 2004. The parties met and bargained, and utilized the services of a State Employment Relations Board (“SERB”) mediator, but failed to reach agreement on the employees’ contribution to the cost of health care insurance premiums. Consequently, the parties selected the undersigned, who was appointed by the 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 on July 21, 2004. At the hearing, the parties agreed to extend the time for fact finding to Thursday, August 5, 2004. Having considered the evidence and arguments presented at the hearing, the Fact Finder hereby issues the following report and recommendations.

II. MEDIATION:

Having engaged in mediation with a SERB mediator, the parties were not inclined to mediate at the fact finding hearing. The sole unresolved issue is:

Article XII, “Employee Benefits”, Section 8, “Pension Plan, Hospitalization, and Medical Care”.

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. ISSUE AND RECOMMENDATION

Issue: Article XII, "Employee Benefits", Section 8, "Pension Plan, Hospitalization, and Medical Care"

The current collective bargaining agreement reads as follows:

- A. The City shall provide a network plan of health care protection at no cost to unit members unless recommended by consensus of the Health Benefits Subcommittee. The plan is described as a managed care, point of service plan. It shall be packaged with a vision plan and dental coverage. A listing of benefit structure in effect at the onset of this contract is attached hereto as Appendix B. This shall be on a single or family plan basis, at no charge to unit members, provided that the total increase in plan year 2002 does not exceed 5% nor in year 2003 exceed 5% nor 5% in 2004. In the event that increases in health care costs exceed the City's contribution of 5% in a calendar year of the plan, the Joint Health Benefits subcommittee will meet to determine how the additional increases shall be absorbed with possible options including plan changes or employee electives to the plan.

* * *

- C. Union agrees to participate in a joint (all municipal unions plus non-union representatives) Health and Benefits committee which will meet and will discuss cost containment measures or changes in health care. The Union shall select its own representatives. This committee shall then make recommendations as to modifications or directions for the City's health care program.

The Union shall agree to abide by committee recommendations dealing with cost effective methods to administer the present benefit plan as contained in the contract.

The parties agree to re-open this contract to discuss the terms of Health Insurance at that time when the Health and Benefits Committee has made a final recommendation for years 2001 or beyond.

* * *

Union Position:

In its pre-hearing position statement, the Union points out that no City employees shared the cost of the health care plan until the current contract was negotiated, and that the 5% cap on the City's contribution appeared reasonable, given the rate of inflation of medical costs, and the prior agreement of other unions representing City employees. The

Union states that it “insisted upon a reopener clause which would allow the parties to further negotiate the health care plan should costs significantly exceed the employer’s 5% cap”. When the January 2003 renewal quotes exceeded the prior year by 20%, the City was unwilling to increase its contribution beyond 5% and, despite changes in the plan’s design, employees began contributing to the insurance premium. In January 2004 the renewal costs were again increased by double digits, and changes in the plan’s design were insufficient to avoid a significant increase in costs. When the City failed to provide the relief requested by the Health Care Committee, and employee costs for family coverage rose to \$115.81 per month, the Union notified the Employer of its desire to open negotiations on health care. Despite negotiations on January 28 and February 16, and mediation on March 30, the parties were unable to reach an agreement.

With yearly health care insurance costs increasing 15% - 20%, the Employer’s 5% cap is not reasonable, forcing employees to share a disproportionate burden of the increased cost, the Union contends. The increased cost to employees last year amounted to 1.5% of the average employee’s salary, and will result in a net loss of income. The Union proposed to split health care costs, 95% for the Employer, and 5% for the employees. The Employer made no counter proposal, stating that it preferred to wait until the negotiations for the successor agreement, over the summer. The Union responded with a proposal to rebate a portion of the employees’ 2004 contribution, up to \$650 per employee.

The Union concluded its pre-hearing statement characterizing the Employer’s 5% cap on health care cost increases as “enviable” and one which “any employer, public or private, would love to have”. Employees’ 3% wage increases are rendered “negligible” due to the “disproportionate share of the health care costs employees are asked to share”, the Union argues. Continuation of this arrangement, if the current trend in costs continues, would burden families with a \$300 per month health care deduction by the end of the next collective bargaining agreement.

Management Position:

The City's pre-hearing position statement contends that "no change to the current contract language or terms of insurance coverage should be made." All employees of the City are subject to the same cost sharing provisions as the employees in this bargaining unit, so internal equity dictates no change in this regard. The reopener language was not intended to provide these employees a better package than other City employees. The external comparables also show that the City is not out of line: fully paid health insurance is increasingly rare, and the Health Benefits Committee fashioned a three tier plan which provides for employee contribution rates ranging from 2% of total premiums to 12%, which SERB data shows is in line with Ohio public sector averages. The City pays over \$800 per employee per month for employees who choose family health insurance coverage, one of the highest rates in the area, and well above the average.

Since the parties have already begun negotiations for a successor agreement which will incorporate changes in the health insurance provisions, the Employer asks the fact finder to refrain from recommending changes to the contract, as any changes to insurance "should be negotiated in the context of a successor agreement, not as a stand-alone provision."

Evidence and Arguments:

The Union declared at the hearing that it was not seeking a disparity in levels of benefits, compared with other City employees, and wishes only to limit the increases in health care insurance premium contributions by employees it represents. After absorbing cost increases in plan year 2003 (plan years coincide with calendar years), employees learned in mid-January 2004 that they would be hit with a larger increase this year. They were required to make a choice among three levels of coverage before knowing whether the City would give them any relief from the increased costs, and some employees might have made a different selection if the costs were known in advance. The Employer responded by pointing out that the Labor-Management Committee, which includes representatives of the Union, meets throughout the year, and it received proposals from insurance carriers late last summer. A document furnished by the City shows that employees apparently felt the benefits were worth the costs, as only 6 chose the low-cost

plan, 18 opted for the mid-cost plan, and 68 went with the high plan. Further analysis shows that most employees in this unit (51 of 92) chose family coverage, and most of those who chose family coverage (37 of 51) opted for the “high” plan.

The Union presented a section of SERB’s 2003 12th *Annual Report on the Cost of Health Insurance in Ohio’s Public Sector* which states, “When employees pay a portion of the premium cost for medical coverage, their monthly contributions average \$36.75 and \$103.14 for single and family coverage, respectively. These rates amount to 11.2 percent of the cost of a single plan and 12.6 percent of the monthly family premium.” The Union’s summary of rates and contributions effective in January 2003 showed that employees who selected the “mid plan” made no contributions, and those who selected the “high plan” contributed \$10.40 for single coverage, \$19.32 for an employee plus one family member, and \$35.04 for family coverage, which the Union felt was reasonable. In plan year 2004, those contributions raised to require contributions by all unit employees, including those who chose the new “low plan”, and employees on the “high plan” were required to contribute \$39.77 for single coverage, \$71.91 for an employee plus one, and \$115.81 for family coverage. These were over 70% increases over the previous year, and although the employees received a 3% wage increase, 1.5% was eaten up by the increased health insurance costs.

The Union presented Table 5 from the above-cited SERB report which shows, in cities comparable in population to Hamilton, the average employee contribution for a single employee is \$22.06, and for family coverage it is \$58.28 monthly, both of which are lower than the employee monthly contributions for City’s high plan: \$39.77 and \$115.81, respectively. Another table from the SERB report shows that counties in Ohio require employee contributions which are larger than cities, on average.

[Table 1 from the SERB report also shows that Cincinnati area public employees’ average monthly contributions (for medical coverage only, excluding dental and vision) is \$22.30 for individual coverage and \$66.62 for families; and that the average monthly employee contribution (for medical coverage only, excluding dental and vision) in cities employing 250 to 499 employees is \$18.68 for single coverage and \$59.86 for families. In the opinion of the undersigned, the data in this chart is not comparable with the other

data presented by the parties, all of which incorporated dental and vision coverage. I do not rely on this document in my analysis of the issue before me.]

The Union observed that employees were forced to get into the real world by sharing the costs of health care insurance, which they did; and now the City need to get into the real world by accepting a fair distribution of those costs. The remedy is difficult to create at this time because the Employer rejected the Union's proposal and made no counter proposals of its own, and now the contract is about to expire. The Union proposes, as an after-the-fact remedy, a rebate to employees of \$650, to reimburse them for excessive costs this year. The long-range solution will emerge from current bargaining for a successor collective bargaining agreement; the Union prefers a cost-sharing split of 95% covered by the City and 5% by employees. The Employer's position in bargaining, which would make no change in the existing arrangement, would result in an unrealistic 70% increase in the employees' contribution.

The City presented evidence that the current cost of coverage for the lowest-cost plan ranges from \$3.17 per biweekly pay period for single coverage, \$5.50 for the employee and one family member, and \$10.37 for family coverage (equivalent to a range of 2% to 2.5% of the cost of the plans). Employees who choose the middle range plan contribute \$9.06 per pay period for single coverage, \$16.17 for the employee and one, and \$27.12 for family coverage (from 5.9% to 6.3% of the total cost). At the highest level plan, contributions by employees are \$19.89 per pay period for single coverage, \$35.98 for an employee plus one, and \$57.91 for a family (still only 12.3 to 12.6% of the total cost). This includes both a dental plan and a vision plan, and is exactly what the Health Benefits Committee (including four representatives of the Employee Organization) recommended. The City pointed out that the Employer's share of costs is not inconsistent with SERB data, and that the absolute dollar amounts were driven up by high rates of utilization by employees.

A summary of premiums paid, versus claims reported in plan years 1998 through 2003, presented at the June 23, 2004 Health Insurance Committee meeting (a month before the fact finding hearing), shows that claims paid to employees equaled 91% of the amount received in premiums in 2003, and claims are exceeding the premium receipts so

far in 2004, the Employer pointed out. The City explained that insurance carriers want to keep claims down in the range of 70% to 80% of the amount received in premiums, so they will increase their premiums in future proposals to cover the high utilization rates by employees.

The Employer submitted portions of ten labor contracts between it and unions which represent over 600 employees (unrepresented employees get whatever the unionized employees get), and all of them included a 5% cap on cost increases for the City's portion of health care insurance premiums since 2002. The City paid the whole cost until then, for all employees, and all City employees now pay the same contribution toward that cost. The Employer argued that internal equity requires no change in the arrangement with the Union.

The City compiled a comparison among Hamilton and seven nearby jurisdictions which showed that the City's share of the maximum monthly health care premium is only .059% below the average of the other cities for single coverage, and is 5.37% above the other cities' average cost for family coverage. The Union's proposal in current contract negotiations, for the City to cover 95% of the costs, would put the City's burden above all of the other cities, at \$871 for each employee's family coverage every month. As pointed out by the Union, SERB's 2003 12th *Annual Report on the Cost of Health Insurance in Ohio's Public Sector* states on page 2 that employees' portion of costs average 11.2% for single coverage and 12.6% for family coverage, not 5% as proposed by the Union. Compared with other cities of its size in Table 5, the City is comparable in the contribution of employees for single employee coverage, and the City's high plan is the only one above those cities' average. Butler County, which is one of the largest employers in the area, also offers its employees three tiers of health insurance coverage, but the City's employees have better coverage at significantly less cost to them. In summary, the external comparisons favor leaving the contract language as it is.

Documenting the history of the cap on the Employer's share of increased costs, the Employer presented sections of its collective bargaining agreements with other unions representing its employees, all of which have the same language regarding health care insurance coverage for the period through the year 2000 (contract expiration dates are no

longer “in synch” because of intervening events). The Employer’s notes from the July 29, 1999 bargaining, which resulted in extending the contract between the City and the Union from September 1999 through August 2001, indicate the parties faced a “three part problem” which included the health care issue, that the Employer agreed to a contract reopener for health care, and that the negotiations concluded that day; there was no specific reopener language at that meeting. That extension agreement, signed January 21, 2000, provided that the City would pay the first 4.5% of premium increases, and that the parties could reopen the contract to discuss terms of health insurance after the Health and Benefits Committee made its final recommendation for years 2001 or beyond. A December 2000 memorandum to all City employees announced that the insurance carrier had initially proposed a 9% increase for renewing the coverage, which exceeded even the City Council’s agreement to cover up to 5.6% increase for 2001 only. The Insurance Committee adjusted some benefits downward and brought the cost within the City’s cap, and no employee contribution was necessary. City Council approved the increase of its coverage to a 5.6% increase for Plan Year 2001 on December 13, 2000. The City and the Union signed an amendment to their contract the next day, and the City Council approved it on December 27, 2000. The Employer explained at the hearing that all union contracts were the same in this regard. The City did not try to eliminate the reopener language at that time, but the intent was to reopen the contract when the cap was unknown.

Collective bargaining agreements negotiated in 2001 have the same language regarding the health care insurance, consistent with the history of pattern bargaining and internal equity, except that the 5% Employer cap on increased costs was amended to 5.6% in some, and the Union’s contract retained the reopener language which had been inserted when the cost of the 2001 plan year was not set before the labor agreement was concluded. Specific caps have been bargained since then, and a fact finder should not upset those agreements.

In conclusion, the City contended that the City’s employee contributions to health care insurance costs are not out of line with the State-wide or jurisdictions’ employee contributions. The County employees’ insurance premiums also support that the City’s contribution level is reasonable. Other City employees pay the same amount as do

employees in this unit. Thus, the Fact Finder should not grant City employees any additional benefit. During the contract reopener, the City negotiated in good faith, and engaged in mediation. The reopener language is no guarantee of an increase in benefits. The City proposes no change in the current contract. The Fact Finder should take into consideration that the issue will be addressed in the current negotiations.

The Union, in its response to the City's presentation at the hearing, contended that the issue before this Fact Finder is the future resolution of the problem presented here. The Union noted possible confusion between monthly statistics used by SERB and the Union, and the biweekly payroll deductions. The Employee Organization agreed that high rates of employee utilization of health insurance is a widespread problem, but contended that rising prescription drug costs drive health insurance up, with more long-term daily use of drugs. Although employees now have an option of low-cost plans, in the end they pay the price by higher co-payments and out-of-pocket maximums. Employees choose the high plan in order to make their costs more predictable, not out of an endorsement of cost-shifting to them. They prefer to avoid the risk of later expenses. The invention of the "employee plus one" plan was a good move for the City because it saves the City money for those employees whose only alternative had been family coverage. The Union noted that the City's employees pay a higher average percentage of costs than the 7.7% average paid by employees of cities of the same size (SERB table 5). The County's plans are so different from the City's that they are not comparable.

Contrary to the City's assertion, the Union proposed the reopener language to deal with unknowns in the future, if needed. Previously, it had been unnecessary because the Committee reduced plan benefits, and this erosion of the plan avoided the necessity of cost sharing. Employees co-payments have been increased, for example, and chiropractic services were eliminated.

If the Employer's cost cap remains at 5%, the consequence will be that employees will bear a disproportionate portion of the increased costs; this inequity is what the reopener was all about. The Employer was unwilling to give up its cap because it will be worth a fortune to the City in the future, as medical cost inflation gets worse. The Union only reopened the contract because employee costs became excessive; the other unions

failed to negotiate a reopener in their contracts, which gave the City a blank check to cover inflation. The Employer wants to delay bargaining on this subject; their first proposal was to retain the current cap and eliminate the reopener. Recognizing the pattern of bargaining, some union has to be the first to negotiate a change in this item. The City is satisfied with the pattern bargaining when it is short on money and wants to decrease wages, the Union argued.

The City responded by pointing out that the employees' contributions increased due to the contract language, but the Employer's costs are also up, and for many years the City absorbed all health care insurance costs when other employers did not do so, and the City gave wage increases in those years, also, despite increases in all of the City's costs. Since employee utilization of the plan's benefits has driven up the costs, the employees should share those increased costs.

The City is not out of line with other employers, although it may have been out of line in years past when it did not require employee contributions; now, the City is just getting into line. The cap in this contract expires three weeks after the fact finding hearing. It is tied to the wages in the collective bargaining agreement, and intervening events do not support a rebate to employees. The City is treating its employees like other municipal employees throughout the state, and this unit of employees is treated just like all other employees of the City. The Fact Finder should not change the cap at this time, when the parties are negotiating a new contract.

The Union has claimed that half of the employees' wage increase was eaten up, but they still had a net gain while the City's costs are all up, and it has not enjoyed a net gain. The City has high total health care insurance premium costs, so the dollar amount is high, but the percentages of the employees' contributions are not out of line.

In conclusion, the Employer urged the Fact Finder to maintain the current contract language, and not to grant a rebate.

Findings of Fact and Rationale:

It is apparent from the foregoing that the rising cost of health care insurance is a widespread problem for all employers, their employees, and their unions. In my opinion, employees are less able to cope with these increases than are their employers, although

municipalities in Ohio have some particular financial problems at this point in history, also. My inclination would be to recommend a shift of the greater portion of the burden of future increases from the employees to the City, probably by putting a cap on the portion of the increases for which employees will be held liable, and eliminating the City's cap. As the statute requires, however, I have considered "The ... ability of the public employer to ... administer the issues proposed", and conclude that at this point in the term of the collective bargaining agreement, it would not be feasible to change a basic contractual arrangement within days of the expiration of the contract. The parties, themselves, are in a better position to deal with this ongoing issue in their current negotiations.

In recognition of the impractical nature of a fact finding recommendation to change the employees' share of the insurance premium at this late date, the Union has suggested an alternative remedy: a rebate of the employees' contributions. This is a new concept, not found in the parties' past agreements to my knowledge, and should only be adopted by mutual agreement of the Union and the Employer, not through the fact finding process.

In conclusion, I will recommend no change in the existing language of Article XII, "Employee Benefits", Section 8, "Pension Plan, Hospitalization, and Medical Care".

Fact-Finder Recommendation

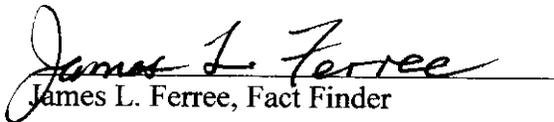
It is hereby recommended that the current language of Article XII, Section 8, not be altered or amended.

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 Timothy Werdmann at: City of Hamilton, 345 High Street, Suite 710, Hamilton, Ohio 45011; and to the Union's representative, John Gray at: I.U.O.E. Local 20, 1216 East McMillan Street, Cincinnati, Ohio 45206.

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 23rd day of July, 2004.


James L. Ferree, Fact Finder

James L. Ferree, Labor Arbitrator

AAA • FMCS • SERB

STATE EMPLOYMENT
RELATIONS BOARD

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July 23, 2004

Timothy G. Werdmann, Asst. Law Director
City of Hamilton
345 High Street, Suite 710
Hamilton OH 45011

John Gray, Business Manager
I.U.O.E. Local 20
1216 East McMillan Street
Cincinnati OH 45206

Re: IUOE Local 20 & City of Hamilton
Case No. 04-MED-02-0127

Gentlemen:

Enclosed is my Fact-Finder Report in the case which I heard on July 21, 2004. Also enclosed is a bill for my expenses and charges, to be borne equally by the parties. Please remit the amount indicated on the attachment promptly. For your tax records, my tax identification number is on the bill.

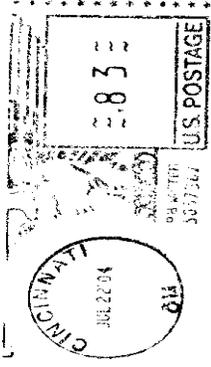
Thank you for the opportunity to be of service. I look forward to working with each of you in the future.

Yours truly,


James L. Ferree

Encl.
cc:
Dale A. Zimmer, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus OH 43215-4213

James L. Ferrie
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July 23, 2004

Timothy G. Werdmann, Asst. Law Director
City of Hamilton
345 High Street, Suite 710
Hamilton OH 45011

John Gray, Business Manager
I.U.O.E. Local 20
1216 East McMillan Street
Cincinnati OH 45206

Re: IUOE Local 20 & City of Hamilton
Case No. 04-MED-02-0127

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Thank you for the opportunity to be of service. I look forward to working with each of you in the future.

Yours truly,


James L. Ferree

Encl.

cc:

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State Employment Relations Board
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