

FACT-FINDER REPORT

STATE EMPLOYMENT
RELATIONS BOARD

Before the
State Employment Relations Board
State of Ohio

2004 SEP 22 A 10:20

September 20, 2004

In the Matter of:

AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES,
OHIO COUNCIL 8

Employee Organization

and

CITY of CINCINNATI

Employer

Case No. 04-MED-04-0497

I. HEARING:

DATE: September 8, 2004, 9:00 a.m.
LOCATION: Water Works, 5851 Kellogg Ave.
Cincinnati, Ohio

APPEARANCES:

For the Employee Organization:

Robert Turner, Regional Director, AFSCME, Ohio Council 8
Renita Jones-Street, Staff Representative
Thomas E. Ellis, Staff Representative

For the Employer:

Rodney Prince, Human Resources Director
Carole Cullahan, Assistant Human Resources Director
William E. Moller, Financial Director
Ursula McDonnell, Supervising HR Analyst

Fact Finder:

James L. Ferree

INTRODUCTION:

The City of Cincinnati, Ohio (herein called “the Employer” or “the City”) employs about 2370 employees who work under the City Manager or independent boards and commissions and who are represented in collective bargaining by American Federation of State, County and Municipal Employees, Ohio Council 8, Locals 190, 223, 240, 250, 1543, and 3119 (“AFSCME”, “the Employee Organization” or “the Union”). The Employer and the Union were parties to a series of collective bargaining agreements, the most recent of which was effective from August 5, 2001 through August 4, 2004 and has been extended. The parties bargained for a new contract and reached a tentative agreement which was presented to their ratifying bodies, but the Union membership rejected the proposed contract. Subsequently, 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 in the conference room of the water works building on Kellogg Avenue in Cincinnati at 9:00 a.m. Wednesday, September 8, 2004. At the hearing, the parties agreed to extend the time for fact finding to Monday, September 20, 2004. Having considered the evidence and arguments presented at the hearing, the Fact Finder hereby issues the following report and recommendations.

II. MEDIATION:

At the hearing, the parties declined the Fact Finder’s offer to mediate. The parties have agreed upon language for nearly all of a new contract, with the exception of five articles. It is hereby recommended that the agreed-upon contract language be incorporated into the parties’ new collective bargaining agreement.

The remaining unresolved issues are:

1. Article 11 – Seniority
2. Article 12 – Layoff and Recall
3. Article 22 – Health Insurance
4. Article 44 – General Wage Increases
5. Article 48 – Length of Contract.

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

Issues 1. and 2: Seniority and Layoff & Recall

Issues 1 and 2 are closely related and will be considered together.

Article 11 - Seniority

The existing collective bargaining agreement language includes the following:

Seniority shall be an employee's length of continuous service with the City or continuous length of service in a job classification where only classification seniority is applicable.

* * *

B. Seniority shall be broken when an employee:

1. resigns – unless reinstated within one (1) year,
2. is discharged for just cause,
3. is laid off and not recalled within time limits as determined by the Civil Service Commission.

Union Position:

The Union proposes to change the first line of section B. to read, "Bargaining Unit Seniority shall be broken when an employee:", to strike the reference to "Civil Service Commission" in item 3, and replace it with "provisions of this Agreement.", and to add:

4. leaves the bargaining unit to take a non-bargaining unit position for a period of time greater than forty-eight (48) months.

Management Position:

The City opposes any change in the language of this part of the current contract.

Article 12 – Layoff and Recall

The current contract includes the following language:

9. In the event the City Manager identifies an employing unit for non bargaining unit downsizing, which will have a negative impact as a result of bumping within the bargaining unit, then no later than 30 days prior to the actual job elimination and bumping, the LMC or appropriate sub group will meet to discuss the impact of the downsizing on the bargaining unit. Recognizing that non-bargaining unit employees retain bumping rights according to this article, the committee will examine possibilities to minimize bumping in the bargaining unit. The City Manager does not relinquish inherent management rights regarding downsizing and layoffs.

Union Position:

The Union proposes to delete the above language and replace it with the following:

9. Once an employee has left the bargaining unit and has a break in seniority as described in Article 11 of this Agreement, he/she shall have no bumping rights into any bargaining unit positions. Non-bargaining unit employees who have never worked in the bargaining unit shall have no bumping rights into the unit.

Management Position:

The City opposed any change in the existing contract language.

Evidence and Arguments:

The Employee Organization¹ wants to protect bargaining unit members from being bumped out of their jobs by any employee who was not a member of the unit within the past four years. On August 6, the parties tentatively agreed on the 48 month limit, but after the Union membership rejected the tentative agreement, presumably based on the

¹ The Union objected to the City being permitted to present any evidence at the hearing on issues that were not presented to the fact finder prior to the day of the hearing in the form and fashion that is required by the rule, Ohio Administrative Code 117-9-05F. That rule provides that a written statement on all unresolved issues, including proposed contract language, must be submitted. The Union's objection is based on the absence of contract language in the City's submission, including effective dates. The Union urged the fact finder to not take any evidence from the City on those issues, because the City failed to comply with the rule. The City argued that its submission substantially complies with the rule.

The fact finder interpreted the rule to mean that each party is obliged to give pre-hearing notice of issues it wants to bring to fact finding, and the Union's submission alone was sufficient to put the five issues before the fact finder, even in the absence of any submission by the Employer. Inasmuch as those issues were properly placed in fact finding, both parties are permitted to present their evidence on those issues at the hearing. In the event a party fails to submit a proper pre-hearing statement of the issues, it would be precluded from raising additional issues which were not placed before the fact finder by the other party's pre-hearing statement. Moreover, the fact finder held that the City's pre-hearing submission adequately presented the issues to be considered, which coincided with the issues in the Union's submission. The Union's motion was denied.

insurance and wage provisions, the City changed its position from a four-year limit on supervisors bumping back into the unit to no limit on bumping.

The Employer pointed out that its proposal is to retain the historical practice, which complies with the law, and it is the Union proposing a change. After reaching the tentative agreement, the City changed its position because of feedback from supervisors. Front line supervisors who spend many years directly overseeing the work of bargaining unit members would be more qualified to perform the work than employees who may have only six months' experience on the jobs. A limit on supervisors' bumping rights would inhibit the City's recruitment of the best candidates into supervision; employees would be reluctant to forfeit the job security afforded by bumping rights. The Employer said it is reconciled to a recall list for three or four years, but it has problems with City-wide bumping, regardless of the employee's qualifications. The City said it is afraid of some absurd results under the Union's proposal, and at least some level of minimal ability to perform is required. The Employer said that the Union further wants to double an employee's chance to challenge a layoff, adding a grievance process through the Union which would duplicate the Civil Service process. Starting next year, there will be layoffs.

The Union protested that the City's description was not AFSCME's proposal, and that all the Union proposed was to reinstate the language tentatively agreed upon earlier in negotiations. The City referred to the Union's fact finding hearing submission, the Article 12 proposal dated 7/30/04 at tab E, page 5, section 3, which states, "Employees who are reduced or laid-off may bump less senior employees within the same classification, regardless of the department." The City pointed out that classifications are shared by departments. The Union responded, saying that the City proposes not to let an employee bump into a classification he/she is already in, and that 48 months is sufficient protection for supervisors. The Employer asserted that first-level supervisors retain job skills longer than that, and it is no harm to the Union to let a former member bump back into the unit, which would have the same number of members.

In conclusion, the Union said that it represents collective bargaining unit members, not supervisors, and its proposal is best for those employees. The Employer closed by

observing, in the case of mass layoffs, the City needs to provide services using the best people available, including experienced supervisors.

Findings of Fact and Rationale:

Although the City now takes the position that language of the most recent contract should be retained, the parties had previously agreed that new language should replace it. The previous contract language appears to have left a loophole for the parties to modify the language by subsequent bargaining: “Recognizing that non bargaining unit employees retain bumping rights according to this article, the committee will examine possibilities to minimize bumping in the bargaining unit.” During negotiations July 30, 2004, the parties reached a tentative agreement defining bargaining unit seniority and classification seniority, and incorporating the language proposed above by the Union. The language which the parties agreed upon earlier is similar to arrangements which are common in labor agreements. It protects bargaining unit employees from being displaced by employees from unrelated departments, and it gives them a chance to try out supervisory positions for four years before losing their ability to bump back into the unit.

Fact-Finder Recommendation

It is hereby recommended that the parties include in their new collective bargaining agreement the previously agreed-upon new language contained in the Union’s proposals for Article 11 and Article 12, above.

Issue 3: Article 22 – Health Insurance

The current collective bargaining agreement includes the following:

- A. Each new permanent, full-time employee who works at least six (6) months, must be given the opportunity to join the hospital-surgical-medical care program. The health care plans will include the Community Preferred Health Plan, the Community Choice Health Plan (PPO) and the Anthem 100 Plan. Effective January 1, 2002, or whenever a health care contribution equal to or greater than the one mentioned above is applied to non-represented employees, whichever is later, employees will pay a portion of the health care premium costs in the following amounts:

January 1, 2002:	\$10.00 per month Single Coverage \$20.00 per month Family Coverage
January 1, 2003:	\$15.00 per month Single Coverage \$30.00 per month Family Coverage
January 1, 2004:	\$20.00 per month Single Coverage \$35.00 per month Family Coverage

The employee rates for insurance co-pays, co-insurance, prescriptions, deductibles, and out-of-pocket expenses shall be as established in Appendix G

The terms and conditions contained in Appendix G shall become effective on January 1, 2002. Appendix G in its entirety, shall expire and be of no further effect upon the execution of a successor to this Agreement, or in the event of a strike.

- B. Although the application is filled out at the time of appointment, membership in the City of Cincinnati health plan group will not become effective until the first of the month following completion of six (6) months of service. An eligible employee who does not join after six (6) months of service must wait until the next enrollment period to apply, unless the employee is transferring into one of the City's health plans from membership in another Anthem Blue Cross, HMP, PPO or Community Choice health plan.

Employees wishing to change from a single to a family contract, must notify the HMP, PPO, or Community Choice health plans within thirty (30) days of their change in family status. Failure to notify within the thirty (30) day time period will result in the employee having to wait until the next enrollment period to change the coverage from single to family. A family contract in the name of one spouse may be transferred to the name of the other spouse at any time.

Employees who are members of an Anthem health care plan by virtue of prior employment elsewhere must pay the Hospital Care Corporation directly until such date as coverage under the City of Cincinnati becomes effective.

- C. A person who quits and then is reinstated must serve a new six (6) months waiting period, but a returning military veteran can pick up coverage on the first of the month following return to City service, provided he or she was a member of a City health care plan at the time of separation.
- D. All active employees of the City covered under any current health care plan shall have the option to join any other City health care plan offered under this labor agreement. The open enrollment for the Community Preferred (PPO), Community Choice or Health Maintenance Plan (HMP), is the time employees may transfer from one plan to another.
- E. An employee in a non-pay status shall have health care plan insurance premiums paid by the City for a maximum of three (3) months while he/she is in such status. The Finance Department will, at the employee's request, continue the employee as a member of the City health plan group if the employee pays the proper premium to the Finance Department. If the employee drops the coverage during such period, he or she may renew membership with full coverage as of their first day back in City service provided the employee completes a new application form.

Should any of the health care insurance plans be withdrawn, the joint health care committee will be responsible to pursue a substitute plan to attempt to assure that there will be three (3) insurance plans.

* * *

APPENDIX G

HEALTH INSURANCE DEDUCTIBLES AND CO-INSURANCE REQUIREMENTS

COMMUNITY PREFERRED HEALTH PLAN

		<u>SINGLE</u>	<u>FAMILY</u>
DEDUCTIBLE	NETWORK	\$200	\$400
	NON-NETWORK	\$200	\$400
CO-INSURANCE	NETWORK	20% to \$300	20% to \$600
	NON-NETWORK	40% to \$800	40% to \$1,600
OUT-OF-POCKET MAX.	NETWORK	\$500	\$1,000
	NON-NETWORK	\$1,000	\$2,000
PRESCRIPTIONS		20% CO-PAY	20% CO-PAY

COMMUNITY CHOICE HEALTH PLAN (PPO)

		<u>SINGLE</u>	<u>FAMILY</u>
DEDUCTIBLE	NETWORK	\$0	\$0
	NON-NETWORK	\$300	\$500
CO-PAYMENTS	OFFICE VISIT	\$15	SINGLE LIMITS APPLY
	INPATIENT	\$100	
	OUTPATIENT	\$50	
	EMERGENCY	\$75	
	URGENT CARE	\$35	
CO-INSURANCE	NON-NETWORK	30% to \$700	30% to \$1,400
OUT-OF-POCKET	NETWORK	\$500	\$1,000
	NON-NETWORK	\$1,000	\$2,000
PRESCRIPTIONS		\$8 Generic	SINGLE LIMITS APPLY
		\$15 Brand	

ANTHEM 100 PLAN

		<u>SINGLE</u>	<u>FAMILY</u>
DEDUCTIBLE		\$0	\$0
CO-PAYMENTS	OFFICE VISIT	\$10	SINGLE LIMITS
	INPATIENT	\$0	APPLY
	OUTPATIENT	\$0	
	EMERGENCY	\$75	
	URGENT CARE	\$25	
OUT-OF-POCKET MAX.		\$1,000	\$2,000
PRESCRIPTIONS		\$8 Generic	SINGLE LIMITS
		\$15 Brand	APPLY

Union Position:

The Union proposed to change the first paragraph by striking the names of the plans:

Each new permanent, full-time employee who works at least six (6) months, must be given the opportunity to join the hospital-surgical-medical care program. The health care plan shall be as set forth in Appendix G. The health care plans in effect in the prior collective bargaining agreement shall remain in effect as set forth in that agreement through December 31, 2004. Effective January 1, 2005, employees will pay a portion of the health care premium costs in the following amounts:

The Union proposed to change the dates and amounts as follows:

January 1, 2005: **\$11.25 per month Single Coverage**
 \$31.50 per month Family Coverage

January 1, 2006: **\$12.94 per month Single Coverage**
 \$36.23 per month Family Coverage

January 1, 2007: **\$14.88 per month Single Coverage**
 \$41.66 per month Family Coverage

Reference to the terms in Appendix G becoming effective January 1, 2002 would be changed to January 1, 2005.

In Paragraph B, the Union proposes to delete the final phrase, which permitted an employee who failed to join after six months of service to transfer from one City plan to another. The paragraph therefore would read as follows:

Although the application is filled out at the time of appointment, membership in the City of Cincinnati health plan group will not become effective until the first of the month following completion of six (6) months of service. An eligible employee who does not join after six (6) months of service must wait until the next enrollment period to apply.

The Union proposes to change the reference in the next line from “notify the HMP, PPO, or Community Choice health plans” to “notify the health plan”. The Union proposes to delete paragraph D, regarding employees covered under a current plan having the right to join another City plan. The Union would also delete the final sentence, regarding the health care committee pursuing a substitute plan if any of the plans is withdrawn.

Instead of the Appendix G in the current contract, the Union proposes this:

		<u>SINGLE</u>	<u>FAMILY</u>
DEDUCTIBLE	NETWORK	\$200	\$400
	NON-NETWORK	\$600	\$1200
CO-INSURANCE	NETWORK	20% to \$1300	20% to \$2600
	NON-NETWORK	50% to \$2400	50% to \$4800
OUT-OF-POCKET	NETWORK	\$1500	\$3000
	NON-NETWORK	\$3000	\$6000
PRESCRIPTION	GENERIC	\$10	
DRUG CO-PAY	BRAND-NAME	\$20	
	NONFORMULARY	\$30	

Management Position:

The City proposes the following language:

The City shall make available to employees and their dependents substantially similar group health and hospitalization insurance, prescription drug, long term disability, dental and vision coverage and benefits as existed immediately prior to the signing of this agreement, except that employees agree to limit their choice as a group to one plan, the 80/20 plan; or the Blue Access and Blue Priority PPO/HMO as set forth herein.

The Employer offered two options, in bargaining, a “preferred provider” plan labeled “Blue Access (PPO)” and a “health maintenance organization” plan called “Blue Priority (HMO)”, shown on the following page. However, the City prefers another option, the “80/20” plan, shown below on page 12.

BLUE ACCESS (PPO)

		<u>SINGLE</u>	<u>SINGLE</u>	<u>FAMILY</u>	<u>FAMILY</u>
PREMIUM SHARE (monthly)		\$20	15% (\$45.67)	\$35	15% (\$122.69)
DEDUCTIBLE	NETWORK	\$0	\$100	\$0	\$200
	NON-NETWORK	\$300	\$400	\$600	\$800
CO-PAYMENTS	OFFICE VISIT	\$15	\$25	Single Limits	Single Limits
	INPATIENT	\$100	\$250	Apply	Apply
	OUTPATIENT	\$50	\$75		
	EMERGENCY	\$75	\$100		
	URGENT CARE	\$35	\$35		
CO-INSURANCE	NON-NETWORK	30% to \$700	30% to \$1,700	30% to \$1,400	30% to \$5,200
OUT-OF-POCKET	NETWORK	\$500	\$1,500	\$1,000	\$3000
	NON-NETWORK	\$1,000	\$3,000	\$2,000	\$6,000
RX (generic / brand / non-formulary)		\$8 / \$15	\$10 / \$20 / \$30	SINGLE LIMITS APPLY	

BLUE PRIORITY (HMO)

		<u>SINGLE</u>	<u>SINGLE</u>	<u>FAMILY</u>	<u>FAMILY</u>
PREMIUM SHARE (monthly)		\$20	10% (\$25.55)	\$35	10% (\$68.55)
DEDUCTIBLE		\$0	\$0	\$0	\$0
CO-PAYMENTS	OFFICE VISIT	\$10	\$15	Single Limits	Single Limits
	INPATIENT	\$0	\$250	Apply	Apply
	OUTPATIENT	\$0	\$75		
	EMERGENCY	\$75	\$75		
	URGENT CARE	\$25	\$25		
OUT-OF-POCKET		\$1,000	\$1,500	\$2,000	\$3000
RX (generic / brand / non-formulary)		\$8 / \$15	\$10 / \$20 / \$30	Single Limits Apply	Single Limits Apply

(Fact Finder's note: the first "Single" column and the first "Family" column appear to be a restatement of the terms of the existing plans.)

ALTERNATE PLAN – 80/20

		<u>SINGLE</u>	<u>FAMILY</u>
PREMIUM SHARE (monthly)		5% (\$12.78)	5% (\$34.29)
DEDUCTIBLE	NETWORK	\$300	\$600
	NON-NETWORK	\$600	\$1,200
CO-INSURANCE	NETWORK	20% to \$1,200	20% to \$2,400
	NON-NETWORK	50% to \$2,400	50% to \$4,800
OUT-OF-POCKET	NETWORK	\$1,500	\$3,000
	NON-NETWORK	\$3,000	\$6,000
RX (generic/ brand/ non-formulary)		\$10/\$20/\$30	\$10/\$20/\$30

Evidence and Arguments:

At the fact finding hearing, the parties agreed to waive argument and to limit their presentations to the documents presented to the fact finder.

The Union’s submission included the tentative agreement between the parties, initialed August 6, 2004, which indicates wage increases in each of 3 years and this:

HEALTH:

Alternate -	1 st Year	2 nd Year
	\$7 Single	\$11 Single 13
	\$20 Family	\$30 Family 35

AFSCME CARE:

Increase to \$63.75

AFSCME also submitted portions of current collective bargaining agreements between the City and local unions of the Fraternal Order of Police, and the International Association of Fire Fighters, and a recent contract with the locals in the Cincinnati Building Trades Council. The FOP agreement includes the following pertinent language:

Sworn members of the Cincinnati Police Department shall have the option available to them to choose either the Anthem Blue Access (PPO) Plan or the Anthem Blue Priority (HMO) Plan.

For the year . . . 2004, employees shall pay \$20/single and \$35/family of the monthly premiums for the Blue Access Plan or the Blue Priority Plan depending on the plan they select. FOP co-payments and deductibles will be the same as AFSCME as shown in Appendix C. Premiums will be deducted from paychecks on a pre-tax basis.

The Fire Fighters contract includes an appendix, part of which shows the following:

TERMS OF COVERAGE – YEAR 2005

Year 2005 Health Plan, effective January 1, 2005, amended as follows:

BLUE ACCESS (PPO)

For the year 2005, Co-Pay Schedule shall equal those rates as negotiated with FOP Queen City Lodge 69.

BLUE PRIORITY (HMO)

For the year 2005, Co-Pay Schedule shall equal those rates as negotiated with FOP Queen City Lodge 69.

The Building Trades collective bargaining agreement submitted by the Union expired, on its face, in May 2003. It showed three health plans, and provided:

The City will pick up 100% of the premium for the Anthem Community Preferred (PPO) and the Anthem Community Choice health plans. Employees in the Health Maintenance Plan (Anthem 100) must pay any difference in the cost between Anthem 100 and the Community Preferred (PPO) or the Community Choice Plans.

* * *

F. The extent of coverage under the insurance plans provided by the City shall be governed exclusively by the terms and conditions set forth in the plans. Any questions concerning coverage shall be resolved in accordance with the terms and conditions in these plans and shall not be subject to the grievance procedure set forth in this Agreement.

The Employer stated, in its submission, that it would prefer to keep the current low premiums for employees, but “the current employee premium contribution cannot be maintained given the increased costs for health care”. The City believes in access to health care for its employees, and has historically kept their costs low. “Unfortunately, recent double-digit increases in the cost of health care, medication, hospitalization, and the current financial imbalance combined with projected budget deficits leave the City no choice, but to redistribute a greater share of the costs for health care coverage to the employees.” Both of the City’s proposals “begin to gradually redistribute a greater share of the costs for health care coverage to the employee”. The City stated that both plans compare well with those provided by other employers in the State, and cites the SERB 2003 publication, 12th Annual Report on the Cost of Health Insurance in Ohio’s Public Sector. The Employer said it intends to offer these same proposals to all employee collective bargaining units.

The City states that it prefers its 80/20 plan because it would offset the rising cost of health care by encouraging employees to actively participate in controlling costs. Thus:

Higher co-pays and deductibles work to discourage frequent unnecessary use of the health care benefit and promote the choice of generic alternative medication when available. Most importantly the 80/20 plan will rearrange the premium, deductibles, and co-pays so as to shift a greater share of the costs onto the more frequent users. To balance the larger deductibles and co-pays the City offers a reduced monthly premium to all employees. It should be noted the plan continues the same premium health care coverage City employees have come to expect and deserve. Controlling the escalating costs of health care coverage must be immediately addressed if the City is to succeed in balancing the budget while continuing to provide quality basic services to the public.

In addition to documentation supporting its contention that the City is under severe financial constraints, the Employer submitted the aforementioned SERB study of the cost of health insurance in Ohio's public sector. The document summarizes medical premiums as increasing an average of 12.8 percent over the 2002 levels for both single and family coverage, and continues to say that 70% of employers surveyed require employees to pay a portion of the cost of a family medical plan, and 63% of employees with single coverage also contribute. The summary states:

When employees pay a portion of the premium cost for medical coverage, their monthly contributions average \$36.73 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.

In the underlying tables, larger jurisdictions tend to have smaller average medical premiums than smaller jurisdictions, and employers in the Cincinnati area enjoy somewhat smaller premiums than other areas of the State, with one exception. Plans covering more than 1000 employees were less expensive for employers than smaller plans, although the employees' monthly contributions were not clearly more or less expensive than in larger plans. Other tables revealed constantly increasing health care costs and insurance premiums. The average employee premium contributions required by Ohio public employers in 2003 was \$36.75 for single coverage, and \$103.14 for families.

Findings of Fact and Rationale:

The undeniable fact of life is that health care costs keep increasing, and Ohio cities have declining revenue available to cover the health insurance premiums. In my experience, large and small jurisdictions have found that they need to ask their employees to contribute an increasing portion of the insurance premium, and to structure their plans

to encourage more judicious use of benefits by employees to keep costs under control. The preferred strategy is to cover the maximum number of employees under the same plan, to get the best rates from insurance carriers. In this case, the City intends to offer the same plans to the other unions representing its employees.

My review of the proposals presented by the parties reveals more similarities between them than differences. Looking at the Union's proposal for 2005, for example, the employee's premium for family coverage would be \$31.50, compared with the City's 80/20 plan which calls for a premium of \$34.29 per month. Deductions for in-network expenses would be lower under the Union proposal (\$200 single and \$400 family versus the City's \$300 and \$600), but the out-of-network deductions are identical. Both plans propose the same percentages of co-insurance (20% for network providers and 50% for non-network) but the maximum co-insurance amounts are smaller in the City's plan for network providers (\$1200 for individuals vs. \$1300 in the Union plan, and \$2400 for families vs. \$2600 in the Union plan); the maximum amounts of co-insurance for individuals using non-network providers are larger in the City's 80/20 plan than in the Union's proposal, however (\$2400 vs. \$1300 in the Union plan for individuals). Maximum co-insurance for family coverage using non-network providers is the same for both the Union plan and the City's 80/20 proposal: \$4800. Other elements of the two plans are also identical (maximum out-of-pocket expenses, and prescription drugs).

The City has shown that new facts have become available since the parties first reached a tentative agreement on this issue, and that the need to control rising health care insurance costs is more pressing than ever. In light of the substantial benefit to be derived from offering the same coverage to all employees in a larger group, it makes sense to facilitate the Employer's attempt to put all its employees in the same plans. For the benefit of all parties involved, I will recommend the Employer's proposal.

Fact-Finder Recommendation

It is hereby recommended that the parties adopt the City's health care insurance proposal, described fully above, in its new collective bargaining agreement.

Issue 4: Article 44 – General Wage Increases

The recently expired contract included the following language:

Effective August 5, 2001, all employees in the bargaining unit shall receive a wage increase of 3%.

Effective August 4, 2002, all employees in the bargaining unit shall receive a wage increase of 3%.

Effective August 3, 2003, all employees in the bargaining unit shall receive a wage increase of 3%.

Charts contained in Appendix I are for comparison purposes only. The official salary amounts are those contained in the CHRIS system. The charts contained herein are not subject to the Grievance Procedure.

Appendix I of the recently-expired collective bargaining agreement consists of 13³/₄ pages of the Division 1 Salary schedule, displaying 665 lines of data in six columns headed “Grade”, “Description”, “Step”, “Hourly Rate”, “Biweekly Rate”, and “Annual Rate”.

There are 182 three-digit numbers in the “Grade” column, each of which is associated with one of the 182 job titles in the “Description” column. Each job title has at least one (but generally a minimum of three) to six steps in the “Step” column, and each step has its own hourly rate, biweekly rate, and annual rate in their respective columns. Pay on the chart ranges from \$8.49 per hour (\$17,725.86 annually) for a Convention Hall Security Worker to \$57,749.65 per annum (\$27.66 per hour) for a Public Health Nurse 3.

Union Position:

The Employee Organization proposed to change the dates in A, B, and C above to 2004, 2005, and 2006, retaining the 3% annual wage increases for each of the three years. The Union would also delete the entire text in the last paragraph of Article 44, and substitute the following language:

The wage rates for each position shall be set forth in Appendix I and shall become a part of this Agreement.

Management Position:

The Employer proposes a two-year agreement with a zero (0%) wage increase in each year, to be accompanied with a provision for wage reopeners at six month intervals.

Evidence and Arguments:

The City argued, in its pre-hearing statement, that its immediate financial situation does not allow for an increase in personnel costs, as it has learned in the period after reaching a tentative agreement with the Union in August. The agreement was for wage increases of 3% in the first year, 2% in the second year with a 1% bonus, and 3% in the third year. The Union membership rejected the tentative agreement, and new information now shows that wage increases would have caused reductions in the number of positions (layoffs) to offset those pay raises. The City hopes that the financial outlook will improve in the future, and offers to reopen the contract to negotiate wage increases if that happens. The August 11, 2004 City Manager's report to the City Council states that City financial projections of stagnant revenues have led to new practices:

In measured response, the Mayor and City Manager have outlined Budget Balancing recommendations that will result in fundamental organization changes. All hiring, promotions and transfers have been frozen with limited exceptions. It is clear, if the local economy remains stagnant or would further digress, significant numbers of employees will face the unfortunate prospect of position eliminations. The majority of these will likely be administrative personnel, however given their comparatively small numbers any position eliminations will certainly touch other employee groups.

The City points out that revenue from traditional sources such as income taxes, estate taxes, and State revenue sharing, has gone flat or declined. "These factors combined leave the City facing a budget shortfall of \$7,000,000.00 in 2004, which projected to become a \$10,000,000.00 shortfall in 2005. The deficit is expected to increase because of the "structural imbalance" from 2005 to 2008, reaching a General Fund deficit of \$71 million by the end of 2008 if no immediate corrective action is taken. Already, in 2003, the City reduced the number of full-time equivalent positions by 42, to balance the budget. Layoffs were avoided through the use of attrition and elimination of vacant positions. Despite elimination of another six full-time equivalent positions in 2004, the City cannot expect to avoid layoffs in 2005.

The Employer calculates that a 3% wage increase to the AFSCME unit would cost the City \$3,542,420, a 2% pay raise would come to \$5,851,155, and a 1% bonus would amount to \$936,987. Thus, the tentative agreement reached in August would cost the City \$17, 842,592 over the life of the proposed contract. It is now evident that the City

cannot afford to do that, and that is why the City needs to ask employees to share the burden of balancing the budget.

The AFSCME bargaining unit employees have enjoyed wage increases of at least 3% in each of the past ten years, including a cost-of-living increase of 3% in 2003, when the CPI-W actually showed inflation at 2.3%. Compared with employees doing similar jobs in other Ohio municipalities, this bargaining unit has done well, both in terms of wages and the share of health care insurance costs they are asked to bear.

If required to give the wage increases sought by the Union, the City would need to eliminate hundreds of positions, which would be to the detriment of both the employees and the citizens of Cincinnati, who would see a decline in the level of services provided them. City Council's June 30 "Budget Policy Recommendations" includes 15 priorities for the City Manager's budget deliberations, including: hire 75 police officers; maintain basic service levels; balance the budget by cutting waste; make capital investments in fire houses and neighborhoods; support community councils and the school system, etc. Whether AFSCME agrees with Council's priorities or not, it is the Council's responsibility to decide how tax dollars can best be spent, and Council solicits input from the public to ensure that its priorities "reflect the will and choices of the tax paying public". Council is unlikely to approve any substantial wage increase for this unit.

The Employer explained at the fact finding hearing that July is considered a bellwether month, and when those figures came out the Employer decided that it could no longer offer the terms which had been in the tentative agreement which Union members turned down. Thus, consistent with the hiring freeze and other austerity measures, the City is now offering a wage freeze for two years, with possible reopeners on wages at six month intervals.

The City called **William E. Moller** to testify; the witness said he has been Finance Director for Cincinnati for three years. The witness identified City Exhibit 14 as a packet of documents related to the City's financial forecast. He testified that the City is required to balance its budget, but income tax revenues which were predicted to increase 3% were flat through July, so expenditures need to be trimmed. Five City departments expect to exceed their budgets by \$2.7 or \$2.8 million.

The 2005 – 2008 “General Fund Forecast” showed that the City did better in 2003 than was predicted, with a positive balance of \$16,500 carried over to 2004. Between a carryover from 2003, a reduction in the number of positions, and a one-time shifting of funds, the City was able to balance its budget last year. Nevertheless, there is a structural imbalance which will result in a cumulative deficit.

The witness described a graph illustrating the difference between a projected revenue growth in 2004 and the flat trend exhibited thus far in 2004; that graph also shows that revenue actually declined in 2002, which was unprecedented at that time. In Mr. Moller’s opinion, the City will not achieve the projected 3.2% growth in revenues. Moreover, the State has frozen the Local Government Fund, which had provided Cincinnati \$28.8 million or 9% of the General Fund, because a half percent State sales tax is due to expire. Also, City Council has capped property taxes at the 2001 level, and a November ballot issue could eliminate the City property tax altogether, for a loss in revenue of \$29 million. In all, 81% of the City’s revenue sources are at issue.

Mr. Moller testified regarding a document titled “Expenditure Issues” which began by pointing out that the projected increases of 10% in 2003 and 8% in 2004 were low compared with actual expenditures of 21% in 2003 and 12% to date in 2004. The total cost of health care insurance is predicted to rise 10% in 2005, regardless of who pays what portion of the premiums. City contributions to the retirement system were budgeted for an increase from 7% of payroll to 11% of payroll costs (\$8.6 million in 2004), and will still be inadequate. Utility and fuel costs are rising. Personnel services take up 78% of the General Fund, and public safety expenditures account for 58% of all General Fund departmental budgets.

The witness identified the City Manager’s August 11, 2004 memorandum to the mayor and City Council on the General Fund status, which characterized the 2004 General Fund revenue data through July as “not encouraging”. Projections had been based on an expectation that the “jobless recovery” would end, and the economy would expand. National economic growth forecasts are now downward, and “the City is not likely to achieve budgeted General Fund revenue this year”. Absent a slowing of expenditures, “a net additional amount of \$2.7 million may be needed to balance the 2004

budget”, the memo advises Council. Given that the City, by law, must balance its budget annually, and any use of reserve balances would result in “less-than-prudent reserve levels” (i.e., below 10% of fund revenue), the City Manager recommended seven measures, which include a hiring freeze for non-essential positions, and filling vacancies with current General Fund employees; freeze non-local travel and training, “budget balancing plans from those departments now on course to exceed budget”; and a one-time Income Tax Amnesty Program to collect unpaid taxes.

Mr. Moller testified that any wage increase will make the deficit worse, and ultimately “to the extent you give people raises, you may have to lay people off”. There is no plan to lay off anybody this year, but next year there will be position reductions, with resulting displacement of unit employees.

On cross examination by the Union, Mr. Moller said that his remarks are based on the budget, which does not take into consideration the parties’ health insurance proposals. When asked about the scheduled wage increase for the Building Trades unit, he said that a 3% increase is scheduled for those 41 employees in June. The City Manager’s August 11, 2004 memo to Council was written with the knowledge that the parties had tentatively agreed upon wage increases for the AFSCME unit, whose wages come from the General Fund (42%) and other restricted funds (58%). The witness identified Union Exhibit W as the “Comprehensive Financial Report” presented to Council in early August, 2004.

On redirect examination by the Employer, the witness was asked whether the tentatively agreed-upon wage increases for the AFSCME bargaining unit was one of the assumptions upon which the budget document was based. He responded that he has to assume that wages will increase pursuant to the collective bargaining agreements and other estimates; the result showed that the City cannot afford those increases. He said that 80% of the City’s budget is for personnel costs.

In conclusion, the City cited its history of compassionate and generous treatment of its employees, as revealed by the SERB chart for a ten year period. With 3% cost-of-living increases every year, employees in this unit have not suffered, especially when compared with employees of other municipalities.

The Union presented evidence in support of its request for 3% annual increases, effective August 5, 2004, for the term of a three year contract. The tentative agreement initialed by the parties on August 6, 2004 provides for wage increases of 3% retroactive to August 5; 2% in the second year, with a 1% bonus on the contract date calculated after the 2% increase; and a 3% increase in the third year of the agreement. The August 4, 2004 memorandum from the City Manager to the Mayor and members of City Council shows that the City was already aware of the reduction in revenues when it entered into the tentative agreement on wages. An August 18 newspaper article reported that the Mayor would hold the line on the wage increase offered by the City, which he characterized as “too generous”, and that “this offer is the limit”. The Union argued that Finance Director Moller’s calculations of budget savings were made on the basis of an assumption that the tentatively agreed-upon wage increases would be given.

The Fraternal Order of Police and the International Association of Fire Fighters locals did better in bargaining wage increases for City employees they represent than did AFSCME: 5% increases for each unit in 2004, including “certification pay” for certifications which are required as a condition of employment for them and are not added to the pay of AFSCME unit employees. Those employees are also paid out of the General Fund. The police and fire fighter units grew in number of employees, also, whereas the AFSCME unit has shrunk by 828, an average of 64 employees each year, since 1991. The City’s choice of where to spend its money makes the employees in the AFSCME unit second class citizens. The employees’ workload has not decreased, but the productivity has increased, and the employees should be rewarded for it. The 3% COLA increase for management employees was restored, according to the City Manager’s memo of February 25, 2004, by juggling some funds.

Union calculations show that less than half of the bargaining unit employees are paid from the General Fund (993 vs. 1377 paid by departments not funded by the General Fund). General Fund employees in the unit earn an average of \$17.90 hourly, and the average for employees in non-General Fund departments is \$18.38. Thus, the Union’s proposed wage increases will cost the General Fund \$1,203,418 in the first year; \$1,239,722 in the second year; and \$1,276.914 in the third year. Costs to departments

outside the General Fund will be \$1,713,717; 1,765,665; and \$1,818,330. The Department of Finance comparative statement on the General Fund for the year ended December 31, 2003 shows an unappropriated surplus of \$14.35 million for 2003, up from \$10,220 the previous year.

The City's Comprehensive Annual Financial Report (CAFR) for the year ended December 31, 2003 includes the following:

According to the Greater Cincinnati Chamber of Commerce in its Economic Outlook 2004, recovery has already begun in the Local Cincinnati area economy evidenced by the increase in manufacturing and total employment which seems to be "bucking the trend" of the national economy. . . .

The report states that the amount established by City Council as its minimum capital reserve to protect the City's bond rating, \$21.1 million, "has already been achieved". The General Fund was sufficient to transfer \$340,000 to the 2004 Capital Budget for neighborhood business district improvement projects, according to the March 2004 "Approved Budget Update" The Union asks, if the General Fund is in trouble, why did the City transfer money out of it?

The tentative wage agreement was reached with knowledge of the City's financial status. The wage increase was factored into budget projections, and there was no recommendation to City Council against the pay raise. Compared with other City employees, the AFSCME unit is receiving a smaller increase, but the City saw the contract rejection by unit members as an opportunity to deny them a wage increase.

The City responded that the Union was citing excerpts from old documents, and the financial situation is a moving target. In this developing situation, timing was everything; the 41 building trades employees bargained their raise before the facts were clear. If the Union members had voted to ratify the temporary agreement, the City would have lived by it, but after the rejection, the City reevaluated its position. The reevaluation was not aimed at this unit of employees; the City just found that it could not afford the raise.

The Union's suggestion that the City has \$171.4 million in assets overlooks the fact that those assets are not cash. The Union also makes an inappropriate comparison between the employees it represents and the safety forces; the City called this "uniform

envy”. City Council’s decisions reflect the will of the citizens, who demand police and fire services; although the Union may disagree with those spending priorities, the law puts that choice in the hands of elected leaders. Compared with other Ohio employees in similar occupations, Cincinnati’s AFSCME employees are well paid. The cost of living increase paid to middle managers totaled the same as the unit received, but managers did not get the other benefits which are paid to the unit employees.

Findings of Fact and Rationale:

In the opinion of the undersigned, the evidence as a whole indicates that the City, like other municipalities in Ohio, must manage on less funds than in the past. It is likely that the Employer was generally aware of that situation when it tentatively agreed to the wage increases in August. While the employees in this unit cannot reasonably expect to match the pay of uniformed security forces, the City needs to pay them a competitive wage in order to avoid losing skilled workers to neighboring jurisdictions. Accordingly, a balance must be struck between a wage freeze which places on the employees the burden of rescuing the City from financial disaster, on one hand, and an irresponsible increase which would put employees at risk of suffering more layoffs than are already likely.

In an effort to point the parties toward an arrangement under which they can enjoy a predictable financial situation for the next few years, I will recommend a small wage increase for each of the next three years.

Fact-Finder Recommendation

It is recommended that the parties incorporate the following language in their new collective bargaining agreement:

Article 44 – General Wage Increases

Effective with the first pay period in October, 2004, all employees in the bargaining unit shall receive a wage increase of 2%.

Effective with the first pay period in August 2005, all employees in the bargaining unit shall receive a wage increase of 2%.

Effective with the first pay period in August, 2006, all employees in the bargaining unit shall receive a wage increase of 2%.

The wage rates for each position shall be set forth in Appendix I and shall become a part of this Agreement.

Issue 5: Article 48 – Length of Contract

The current contract was for a term of three years.

Union Position:

The Employer Organization proposed that the new agreement should run from August 5, 2004 to August 4, 2007.

Management Position:

The Employer proposed a two year contract, with a provision permitting the wage article to be reopened at six month intervals.

Evidence and Arguments:

The City reasoned that the economic future is unpredictable, but it may be able to grant a wage increase within two years, and a two year contract with potential wage adjustments within six months will not lock the parties in to a situation for too long in a period of volatility.

The Union argued that the negotiations were based on the traditional three year contract period. Without specific contract language from the Employer specifying the terms of a wage reopener, the contract would not be a final agreement. There are unanswered questions about the scope of such a reopener, and its consequences. The Union prefers to achieve finality in this agreement.

The City responded, saying that the law provides that a reopener is not limited unless there is specific language limiting it.

Findings of Fact and Rationale:

Inasmuch as the preceding discussion, and the agreements reached by the parties, were based on the past practice of negotiating three year agreements, and in the absence of an agreement by the parties to change the historical term of the contract, I will recommend continuing the three year contract term.

Fact-Finder Recommendation

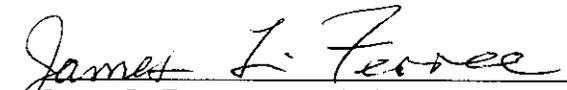
It is hereby recommended that the term of the parties' new contract run from the date of the expiration of the previous collective bargaining agreement, August 5, 2004, for a period of three years, through August 4, 2007.

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, Rodney Prince, Director of Human Resources, City of Cincinnati, Centennial Two Plaza, 805 Central Avenue, Suite 200, Cincinnati, Ohio 45202; and to the Union's representative, Robert Turner, Regional Director, AFSCME Ohio Council 8, 1213 Tennessee Avenue, Cincinnati, Ohio 45229.

A copy of the report has been sent this day 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 20th day of September, 2004


James L. Ferree, Fact Finder