

FACTFINDER
CONSTRUCTION BOARD

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FACTFINDING REPORT

**CITY OF DAYTON, OHIO
AND
OHIO BUILDING & CONSTRUCTION TRADES COUNCIL**

APPEARING FOR DAYTON BUILDING & CONSTRUCTION TRADES

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APPEARING FOR CITY OF DAYTON

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CASE-SPECIFIC DATA

HEARING HELD

November 30, 2006

REPORT COMPLETED

January 28, 2007

SUBJECTS OF IMPASSE

"Me-too" Clause & Wage Guide Schedule

RECOMMENDATIONS

"Me-too" Clause Recommended; Four-Step Wage Schedule Not Recommended

Factfinder: Robert Brookins, Professor of Law, J.D., Ph.D.

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I. Preliminary Statement

This matter arises from an impasse in negotiations between Dayton Building and Construction Trades Council (“Union”) and the City of Dayton, Ohio (“City”).¹ In addition to the Union, the City negotiates collective-bargaining agreements with three other labor organizations: Fraternal Order of Police (“FOP”), International Association of Firefighters (“IAF”), and Dayton Public Service Workers (“Public Service” or “AFSCME”).² The City and the Union have tentatively agreed to all articles in the Collective-bargaining Agreement, except Article 16 for which the Union proposes a “me-too” clause and the ten-step Grade Rate Schedule (“Schedule”), which the Union proposes to reduce to four steps.

Pursuant to the rules and procedures of the Ohio State Employment Relations Board, the Undersigned presided over a factfinding hearing in this matter. All parties relevant to this matter attended the hearing and the Undersigned afforded both parties a full and fair opportunity to make opening statements and to present testimonial and documentary evidence. Finally, the parties had a full opportunity to submit either closing arguments or Post-hearing Briefs. They opted for the latter and agreed to email their Post-hearing Briefs to the Undersigned. Upon receipt of both Parties’ Post-hearing Briefs on December 8, 2006, the Undersigned closed the record. Having had an opportunity to review the record, the Undersigned hereby submits his recommendations in this matter.

II. Issues

1. Whether the facts support the Union’s proposal, under Article 16, to include a “me-too” clause for healthcare contributions for the duration of the Collective-bargaining Agreement.
2. Whether the facts support the Union’s proposal for a four-step Grade Rate Schedule.

III. Discussion of Issues

A. Article 16, Health Insurance

Under Article 16 of the Bargaining Agreement, the Parties have agreed to the current coverage, the employee contribution, and the elimination of Section 16A, which excluded health insurance coverage for

¹ Hereinafter collectively referenced as “Parties.”

² Hereinafter referenced collectively as “Labor Organizations.”

1 the families of new employees. Also, the Parties have agreed that two Union members will sit on the City's
2 Health Committee to review all health insurance proposals. The Union is at par with the other three labor
3 organizations with respect to health insurance. The City fully pays for all employees' eye and dental
4 coverage.

5 **1. The Parties' Positions**
6 **a. Union's Position**

7 The gist of this dispute is that the Union proposes to amend Article 16 by adding a "me-too" clause that
8 would remain in effect for the remainder of the Collective-bargaining Agreement. In its position statement
9 and initially at the factfinding hearing, the Union proposed a "me too" clause, which guarantees that the
10 Union's contribution to healthcare premiums will not exceed the other three labor organizations'
11 contributions. However, during the hearing, the Undersigned suggested that the Parties consider tying the
12 "me-too" clause to one of the three labor organizations. The Union expressed immediate and strong interest
13 in that suggestion. After a brief discussion, the City said it could take no action at the hearing but agreed to
14 advise management of the suggestions.¹³ In its Post-hearing Brief, the Union restated its rationale for
15 proposing the "me-too" clause but changed its position by agreeing to accept a "me-too" clause that focused
16 only on AFSCME's contributions, rather than on contributions of all three labor organizations. However, the
17 City's Post-hearing Brief did not specifically address the change in the Union's position regarding the
18 "me-too" clause.

19 The Union offers several arguments to support its "me-too" proposal. First, the Union claims to need a
20 "me-too" clause in healthcare contributions because it is the smallest of the four unions that bargain with the
21 City. Second, the Union says it is further handicapped because it is the last labor organization to bargain with

¹³ The Undersigned notes that the Union effectively changed its position during the hearing and that the factfinding guidelines permit such a change, so long as both parties mutually agree. That mutual agreement was manifested at the hearing. When the Undersigned asked the City about the feasibility of focusing the "me-too" clause on only one labor organization, the City indicated that it would refer the suggestion to management. However, the City indicated no opposition to the fact of the position change, as distinguished from agreement or disagreement with that change. Since the City did not explicitly disagree with the position change, the Undersigned interpreted the City's response as implicit agreement to that change.

1 the City and, consequently, has no hope of getting a better deal than the other labor organizations; it can only
2 match their packages.

3 The Union further notes that sometimes, it has been unable even to achieve that goal. For example, under
4 the last Collective-bargaining Agreement, the Union paid the highest healthcare contribution of any of the
5 labor organizations. However, the City did award the Union a \$1,000.00 bonus to defray some of that cost.
6 Nevertheless, the need to protect the Union's membership from similar financial burdens with healthcare
7 contributions essentially precipitated the "me-too" proposal. A "me-too" clause would only affect the
8 percentage increase of the Union's healthcare contribution and would apply to yearly increases in healthcare
9 premiums that trigger increases in employees' healthcare contributions.

10 **b. City's Position**

11 The City admits that the Union is the smallest of the four labor organizations but rejects the "me-too"
12 proposal without offering a counterproposal and posits several reasons for the rejection.

13 First, the City's broadest and most fundamental concern is the inherent uncertainty and instability in the
14 health insurance market. Second, the City notes that healthcare costs are rising faster than almost any other
15 budgetary component and threatens its cost-control efforts. Furthermore, the City notes that neither it nor the
16 labor organizations can control healthcare costs and that health insurance is a mandatory subject of
17 bargaining to be balanced against other mandatory subjects.

18 Third, the City stresses the potential for variation or differences in the final packages of the other three
19 labor organizations. According to the City, because it must negotiate separately with FOP, IAF and
20 AFSCME, a "me-too" clause would effectively lock the City into an unpredictable future because each labor
21 organization may opt for a different package, which could impact the level of that labor organization's
22 healthcare contributions. For example, the City notes that it is unclear what type of healthcare package FOP
23 will obtain during its Spring 2007 negotiations with the City. According to the City, FOP could, for example,
24 agree to pay a higher contribution to healthcare in exchange for greater wage increases. Similarly, if the City

1 stops paying for eye and dental insurance, IAF could opt to discontinue that coverage, thereby decreasing
2 its level of healthcare contributions.⁴

3 Fourth, the City argues that a “me-too” clause in healthcare would erode parity between the Union and
4 the other labor organizations. Here, the City contends that the Union presently has a wage-related “me-too”
5 clause, which ensures that the Union will receive wage increases that are equal to the largest increase
6 obtained by any of the other labor organizations. Thus, the City reasons that parity among the Union and the
7 other labor organizations would suffer if the Union also gets a “me-too” clause for healthcare.

8 Fifth, the City argues that even without a “me-too” clause the Union will not pay higher healthcare
9 contributions than other labor organizations. In this respect, the City stresses that it has awarded the Union
10 a bonus to correct such a disparity.

11 Sixth, the City notes that the Union’s members on the Health Committee will help to ensure equity in
12 contributions among all four labor organizations.

13 Seventh, regarding comparables, the City observes that none of the other labor organizations has a
14 “me-too” clause for health insurance. Ultimately, then the City can find no support for the “me-too” proposal,
15 which also is not justified under R.C. §411714(C)(4)(e). Therefore, the City maintains that Article 16 of the
16 tentative Agreement should remain free of a “me-too” clause.

17 **2. Factual Findings and Recommendations Regarding “Me-too” Clause**

18 After thoroughly reviewing the record and the Parties’ positions on this matter, the Undersigned
19 concludes that both the facts and equities support granting the Union a “me-too” clause in healthcare under
20 Article 16. First, during the hearing and in its Post-hearing Brief, the City’s primary, though not sole,
21 objections to the “me-too” clause were the inherent uncertainty of the healthcare market, the spiraling cost
22 of healthcare, and the potential variances among the healthcare packages of the other labor organizations.

⁴ The City noted that although it presently pays for eye and dental care, it does not guarantee to continue that coverage indefinitely.

1 The City's uneasiness about these uncertainties is matched by the Union's concern about the prospect of
2 paying higher healthcare contributions than any of the other labor organizations. Thus, both parties express
3 legitimate concerns about the healthcare packages of the other labor organizations, over which neither the
4 Union nor the City has meaningful control, though arguably the City has more than the Union.

5 The pivotal point for the Union is its willingness to link a "me-too" clause only to AFSCME's healthcare
6 contributions. That change of position addresses and removes much, if not all, of the City's rationale for
7 objecting to the "me-too" proposal. Now AFSCME's healthcare contribution would be the only relevant one
8 for the "me-too" clause. While this new position might not address all of the City's concerns, it substantially
9 reduces the most fundamental ones. This is especially true for the economic concern that a "me-too" clause
10 would afford the Union three chances at selecting the lowest contribution of the three labor organizations,
11 if they negotiate three different levels of contributions. Moreover, the City need not continually look over
12 its shoulders while bargaining with FOP and IAF. Certainly focusing the "me-too" clause on AFSCME
13 reduces the likelihood that the Union will somehow obtain a windfall. By tying the "me-too" clause to
14 AFSCME, the Union effectively places its fate in AFSCME's hand.

15 Equally important, tying the Union's healthcare contributions to AFSCME helps to balance the equities
16 associated with the Union's and the City's legitimate uncertainties. The Union correctly points out that it is
17 the smallest of the four labor organizations and that it bargains last with the City. The latter fact logically
18 tends to diminish the Union's ability to secure better packages than those that the other three labor
19 organizations obtain. The "me-too" clause tied to AFSCME addresses those legitimate concerns, at least with
20 respect to healthcare contributions, without requiring the City to guess which labor organization's healthcare
21 package the Union will select under the "me-too" clause.

22 Nor do the City's remaining concerns alter either the economic or the equitable benefits of a "me-too"
23 clause focused on AFSCME. For example, the City argues that the Union's interest will be protected
24 because two of the Union's members will sit on the Health Committee. Yet, it is unclear exactly how, if, or

1 to what extent that circumstance might benefit the Union when the City and the Union initiate contractual
2 negotiations after the City has negotiated three “done deals” with the other labor organizations. Similarly,
3 the existence of the Union’s “me-too” clause for wage increases hardly addresses excessive healthcare
4 contributions. For example, given the uncertainties of collective bargaining, which the City clearly depicts,
5 one would be hard-pressed to predict that the Union’s wage increases under a “me-too” clause would offset
6 financial inequities in healthcare. Having secured the “me-too” clause and some level of shielding against
7 wage-related inequities, the Union is understandably chagrined to risk the integrity of that shielding by
8 exposing it to a collateral attack from healthcare contributions. Granted, the City awarded the Union a
9 \$1000.00 bonus as compensation for a contributory inequity in health care. However, the difficulties are that
10 such an inequity is potentially recurring, while the bonus was only an after-the-fact (and probably),
11 nonrecurring remedial gesture.

12 Finally, the City’s focus on comparables, while fair and remarkable, does not alter the realities of the
13 foregoing discussion. For instance, the City correctly observes that none of the other three labor
14 organizations has a “me-too” clause in healthcare. Comparables can exert considerable persuasive force in
15 factfinding, but that persuasiveness rests in the first instance on demonstrated similarities between or among
16 the parties being compared. Here, however, the foregoing economic and equitable considerations associated
17 with the Union’s healthcare contributions together with clear dissimilarities between the Union and the other
18 labor organizations combine to drain persuasive force from the City’s comparables. None of the other labor
19 organizations is the smallest in the group of labor organizations, none bargains last with the City, and none
20 has a history of paying the highest healthcare contributions. The foregoing facts convince the Undersigned
21 that the Union’s request for a “me-too” clause in healthcare is not unreasonable, mitigates the risks about
22 which the City seems most concerned, and, therefore, should be granted. Accordingly, the Undersigned
23 hereby recommends that the City grant the Union a “me-too” clause in healthcare tied to AFSCME’s
24 contributions and lasting for the duration of the Collective-bargaining Agreement.

1 **B. Grade Rate Schedule**

2 An employee's tenure with the City essentially determines his position within the Parties ten-step
3 Schedule. The more tenure an employee accumulates, the higher he/she is within the Schedule. For instance,
4 an electrician or plumber who completes the apprenticeship program and is hired by the City will begin at
5 step I of the Schedule and remain there for the first six months. Thereafter the employee moves to step 2 and
6 on to a higher step with each additional year of tenure. In 2006, an employee at step I earned \$21.66 per hour
7 or \$45,052.80; an employee at step 4 earned \$23.58 per hour or \$49,0413.40.¹⁵ An employee moves from step
8 I to step 4 after two and one half years of service.

9 **1. The Parties Positions**
10 **a. Union's Position**

11 The Union proposes that electricians and plumbers who have completed their apprenticeship program
12 should begin at step 4 of the ten-step Schedule. The Union notes that before the last Collective-bargaining
13 Agreement, the Parties had a four-step Schedule. The basis for the Union's proposal is that electricians and
14 plumbers must complete four-five year approved apprenticeship programs at their own expense before the
15 City employs them at step I of the ten-step Schedule. This virtually ensures that the employees will take at
16 least ten years to reach the top of the Schedule. And unlike IAF and FOP cadets, electricians and plumbers
17 receive no assistance from the City during their apprenticeships. The Union does not dispute the dollar
18 amounts at each step of the Schedule but stresses that because it requires six years to complete the
19 apprenticeship programs, employees should either start at step 4 of the ten-step Schedule or return to a four-
20 step Schedule. Finally, in its Post-hearing Brief, the Union essentially altered its position by indicating that
21 it would accept a six-step schedule that allows employees to reach the top in 5.5 years.

22 **b. City's Position**

23 The City's primary objection to a four-step Schedule or to Union members starting at step 4 of the ten

¹⁵ Exhibit B.

1 Fourth, the City notes that ADS certified auto mechanics (“Mechanics”) start above step I in the schedule
2 only because a lower starting wage failed to recruit applicants. Nevertheless, increases in initial wages for
3 these auto mechanics were 1.08/hr and \$1.12/hr, as compared to the \$1.82/hr increase inherent in the
4 proposed four-step wage scale. All other Union employees have eight-ten-step Schedules starting at step I.

5 Fifth, the City seeks to justify defraying some training costs for attorneys and engineers by stressing the
6 time and expense of their education and professional preparation and by comparing their starting wages with
7 the starting wages of Union members on a four-step Schedule. Specifically, the City notes that an attorney’s
8 educational expenses span at least seven years, after which he/she must pay for a bar examination. Similarly,
9 engineers pay for their own training. An attorney’s initial wage is \$46, 946; an engineer starts at \$47, 195.
10 Both starting salaries are less than what Union members would earn on a four-step Schedule.

11 Also, the City notes that although it defrays some training costs for FOP and IAF, there has been a
12 two-pronged reduction in those training costs: (1) IAF applicants must possess EMS certification, which
13 spares the City that cost, and (2) as a quid pro quo for the City’s paying for their training cost, FOP cadets
14 do not receive the Step-I rate until they graduate from the academy. Upon graduation from the academy, fire
15 recruits receive the step-I rate of \$19.74/hour.¹³

16 Sixth, the City contends that a four-step wage scale is unfair to the other labor organizations. Under a
17 four-step pay grade, the Union’s members earn \$14,000 over 2.5 years, in addition to their yearly raises. No
18 other city employee receives that wage within a comparable period. Finally, the City observes that the other
19 labor organizations also have eight to ten-step Schedules that apply the same rules of ascension as those
20 applied to Union members and that R.C., Section 411714(C)(4)(e) does not justify reducing the number of
21 steps in the wage scale from ten to four.

22 **2. Factual Findings and Recommendations: Four-Step Schedule**

23 The facts in the record do not support either reverting to a four-step Schedule or starting at step 4 of the

¹³ Exhibit 1.

1 current ten-step Schedule. A major problem for the Union is that it offers no persuasive facts or evidence to
2 support either proposal, except that it had a four-step Schedule before the last Collective-bargaining
3 Agreement. The City's argument on benefits, costs, comparables, and parity are more persuasive. The City
4 demonstrates that the initial wage of engineers and attorneys are often below those of electricians and
5 plumbers on a four-step Schedule, and the Union offers no persuasive retort to these facts. Although the City
6 offers evidence about the cost of overtime and seeks to justify defraying training costs for fire and police,
7 the facts, evidence, and argument regarding comparables are key and ultimately trump the Union's position
8 and arguments. Consequently, the Undersigned cannot recommend that the Parties alter the current ten-step
9 Schedule.

10 **Notary Certificate**

11 State of Indiana)

12)SS:

13 County of Marion

14 Before me the undersigned, Notary Public for Marion County, State of Indiana, personally
15 appeared Robert Brookins, and acknowledged the execution of this instrument this 9th
16 day of February 2007

17 Signature of Notary Public: Christy Johnstone

18 Printed Name of Notary Public: CHRISTY JOHNSTONE

19 My commission expires: October 25, 2014

20 County of Residency: Boone



CHRISTY JOHNSTONE
Notary Public, State of Indiana
My Commission Expires October 25, 2014

21 Robert Brookins
22 Robert Brookins

Robert Brookins
Professor of Law ♦ Labor Arbitrator ♦ Mediator, J. D., Ph. D.

STATE EMPLOYMENT
RELATIONS BOARD

2007 FEB 12 A 11:56



February 9, 2007

2006-MED-03-0234

Ms. Mary Robertson, Administrator
65 East State Street
12th Floor
Columbus, Ohio 43215-4213

Re: City of Dayton, Ohio and Ohio Building & Construction Trades Council
"Me-Too" Clause & Wage Guide Schedule

Dear Ms. Robertson:

I have enclosed a copy of my factfinding report in the captioned matter.

Respectfully,

Robert Brookins

Robert Brookins