

**Before the State Employment Relations Board
State of Ohio**

STATE EMPLOYMENT
RELATIONS BOARD

In the matter of

2007 JUL -9 A 9:43

City of Marietta
Employer

And

Case No. 07-MED-04-0492

IBT Local 637, AFL-CIO
Union

Sandra Mendel Furman, Esq.
Fact finder

FACTFINDER'S REPORT

Procedural Matters

SERB appointed this fact finder by letter dated May 18, 2007. The matter was scheduled for hearing by agreement of the parties. Pre-hearing statements were received by the fact finder and served by each party upon the opposing party prior to the hearing. There has been compliance with OAC rule 4117-9-05(F).

The hearing was held on June 27, 2007 at the City Building annex in Marietta. The fact finder offered to mediate any/all of the issues. The parties declined to mediate. However, the parties did caucus prior to the record hearing without the involvement of the fact finder and made a good faith effort to resolve the remaining issues. The matters were unresolved and a full hearing was had.

The parties presented witnesses and multiple exhibits in support of their respective positions. The City representatives were Gregory Scott and Patrick Schmitz, Counsel. Dave Sands, the City Safety-Service Director testified. Assistant Safety Service Bill Dauber was present.

The Union was represented by Susan Jansen, Counsel and John Sheriff, Union representative. There were multiple local members present throughout the hearing. Firefighter Eric Moore provided testimony and prepared a Power point presentation. His testimony was received over the Employer's objection. The following individuals were also present: Shane Cochran; Larry Paulton; Marvin Mosser; and Michael Misen.

The parties had engaged in 3 bargaining sessions pursuant to the re-opener clause in the current contract.¹ There were 2 issues presented for determination by the fact finder: wages and health insurance.

This report is issued within the time frame agreed upon by the parties.

Findings of Fact

1. The City of Marietta is located in southeastern Ohio in Washington County. It has been losing population and jobs for a number of years. It is part of the Appalachian region of the state and is located on the Ohio river.
2. Some of the significant job losses were in the manufacturing sector, which usually offers employees a higher wage and benefits. In 2000, over 13% of the family population lived in poverty. Real median income declined 200-2004.²
3. The City's population in 2004 was 14,295.
4. Median household income has decreased in the county from 2000-2004.
5. The City employs 183 persons. 47 persons are in the IBT bargaining unit.
6. The City received two significant bequests totaling nearly two million dollars in late 2005 that were unanticipated and atypical. This type of revenue is not part of the budget and is not likely to recur.
7. The City's income relies on tax receipts, fees for service, grants, and franchise taxes. The City's financial reports and auditor reports were made part of the record. These were reviewed at hearing and prior to the preparation of this report.
8. Wages, salaries and fringe benefits constitute the majority of expenditures. This has been a constant for years.

¹ Article 33 of the current agreement provides in part:

Wages and insurance related provisions shall remain in place as called for in current language through March 31, 2007. Thereafter, Addendum No. 2 (wages) and Article 29 (health care) are subject to full re-opener negotiations under RC 4117.

² The City provided a variety of reports relating to the economic climate of the county and state. These were reviewed at the hearing and in the preparation of this report. Many of the City's documents contain information related to Washington County and covered years 2000-2005. Other reports were current through the last quarter of 2006. The statistics for the entire county may or may not apply to the City in particular. Also, certain data reflected a very minimal growth in employment in the county. Yet the % is up in the last quarter of 2006 as compared to 2000. It is understood that data presented is the best available. There was no evidence presented by the Union that Marietta is experiencing dramatic growth, has new economic prospects for development or is in economic boom times.

9. There was slightly more than a half million dollars received by the City due to the “demutualization” of Anthem. This is a non recurring event. The parties have a settlement agreement relating to the use and disbursement of the funds. The settlement agreement is beyond the scope of this matter.
10. Income tax receipts increased in 2006 by over a half million dollars. There is expectation of 1% growth in income tax receipts for 2007.
11. No employees have been laid off in recent memory but the City has slightly reduced the work force by attrition.
12. Due to the economic environment, the City initiated specific cost savings measures in 2006. It reduced out of town travel, cancelled mowing contracts, and closely reviews purchase orders as to necessity.
13. There was a wage freeze in 2006 which carried over through March 2007. This occurred as a result of findings made by Rob Stein in the fact finding report which preceded the current agreement. Case No. 05-MED-10-1270.
14. The City has three health insurance options at present. One option-the CMM is not used by anyone. All employees had the choice between a PPO and a POS plan. The entire IBT unit (and the clear majority of other City employees) has opted for the POS. The City has charged the employees 12% of the POS premium cost; it paid the remaining 88%.³
15. The current contract with the insurance carrier for the PPO and POS plans expired at the end of January, 2007. The City has not renewed its contracts, but is maintaining the status quo. Premium increases for prior years were significant (averaging nearly 24%/annum) but still within “acceptable” limits. It is noted that there was no premium increase from 2005 to 2006. This year’s premium cost increase from 2006 was 35%. The City will not continue with its present carrier under any circumstances. Continuing this rate will result in utterly untenable costs for the City. This increased premium has been in effect since February 2007.

³ Both parties pointed out that the actual City reimbursement rate under the POS is 94%.

16. The Union does not protest the need to address the huge increase in insurance costs. But the Union will not voluntarily accept any diminution of benefits and/or reimbursement rate.
17. The City's health insurance proposals increase the employee contribution rate from 12% to 20% and include a working spouse rule (Plan 1A), or a plan with the same reimbursement rate minus the working spouse rule. (Plan 2A) The proposed carrier under plan 1A and plan 2A continues as Anthem. A chart explaining and comparing the City's current plan with its proposals is part of the record. The proposed plans increase not only the employee % share of the premium costs, but also raise deductibles significantly. It affects co-pays under Plan 1A. For both proposed plans there is an increased prescription cost. If Plan 1A is accepted, the increased percentage cost in premiums from 2006 is nearly 17%; for Plan 2A, nearly 10%. Under the City's proposed scheme, the entire unit would have either Plan 1A or Plan 2A. Now, employees choose between a PPO and a POS.
18. The IBT is the certified bargaining representative. There have been collective bargaining agreements between the City and the IBT for over twenty years. The parties historically negotiate three year agreements. The current agreement is a three year agreement.
19. The IBT unit is the second bargaining unit of the multiple units in the City to proceed to fact finding on its re- opener clause in 2007.
20. The other City bargaining units are the IAFF and the FOP. The IAFF unit recently concluded negotiations. The parties went to fact finding with Professor Harry Graham on the issues of wages and health insurance. Graham's report is not due until the end of July, 2007 by agreement of the parties. The IAFF proposed a change in health insurance to the Michigan Teamsters Health and Welfare plan. Its proposal mirrors the IBT proposal. The City mirrored *its* proposal to the IBT regarding health insurance.
21. The IBT Health and Welfare Plan (referred to as the YDN-26 plan in the Union's exhibits) uses the Blue Cross Blue Shield traditional network. This is the same carrier as is available under the current plans. The Health and

Welfare plan as proposed improves the current co- insurance ratio and keeps the deductibles the same, but increases the out of pocket maximum by \$500. (The POS plan maximum family deductible is \$1000). Compared to the current carrier, the IBT Health and Welfare plan offers a 25% savings in premium costs.⁴ Both the IBT work up and the IAFF workup for health care show a consistent savings over the City's proposals. This is true even if the entire available plan is accepted: major medical, prescriptions, disability, dental, optical, life insurance. The savings occur even if the employer pays 100% of the premium cost.

22. The FOP is still in negotiations. Its re-opener language is different than the IBT language regarding health insurance. Its contract expired 3-31-07.
23. There is no joint bargaining.
24. Although there is no hard and fast rule, the clear trend at the City has been to generally provide the same wage increases and insurance benefits to its three bargaining units.
25. The re-opener language on insurance and wages when ratified will be retroactive to 1-1-07 by agreement of the parties.
26. Over a six year period, IBT annual wage increases averaged 5.5% (including insurance). In 2005 the wage only percentage increase was 3%. The PERS employer pick up (of the employee's statutory share) is 4.25%.
27. The non bargaining unit employees received increases in the amounts set forth in certain Union exhibits. The City explained the statutory reasons for the timing of certain increases for the elected officials. It also provided testimony explaining the dramatic increase for the Aquatics Director.
28. The City offered 1.5% as a wage increase to the IBT unit for 2007 and 2008.
29. For various "comparable" municipalities, the IBT wage rate comparisons indicate that Marietta's scale is in the mid range.⁵ The IBT selected cities in the south central and southeastern parts of Ohio. Some of the comparable

⁴ This percentage is differently calculated by the parties. The fact finder notes that the fact that there will be savings is not disputed by the City.

⁵ An "apples to apples" comparison was not available, as the effective dates in the City charts pg 13-16 in tab 5 had differing effective dates.

cities have a PERS pick up which has the effect of increasing the take home pay. As noted above, Marietta has a partial PERS pick up. Wage increases for the IBT selected cities ranged from a low of 1.5% in 2007 to a high of 4%. In 2008, the range of comparable cities show increases from 2% to 4%.

30. The majority of the unit's employees are at the top step. A majority of the unit was hired more than 6 years ago.
31. The Union proposes an across the board increase of \$1/hr for 2007 and 2008. Its negotiated wage increase in the current agreement for 2005 was expressed in cents, not percentages.

ISSUE No. 1. HEALTH INSURANCE

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the listed factors were not relevant. Other factors had no evidence presented as to their applicability.

The City seeks an increase in the contribution paid by the unit; an increase in the co-pay for prescription drugs and/or office visits (depending on selection of Plan 1A or 2A); and an increase in the deductibles.

The facts show dramatically escalating health care costs for the City. The City characterizes its proposal as reasonable and in line with other like jurisdictions. Certain jurisdictions set the employee share as a monthly cost. It is hard to compare this to percentages. Only an out of pocket number makes for a ready comparison. Even the out of pocket amount may be offset by relatively higher wages or other economic benefits not present in the record.

The benefits offered under Marietta's proposed health insurance plans are not comparable to those currently received. There are increases in co pays. The most significant change is the increased deductible. The provider would remain as Anthem. There would be an increase in costs with no enhancement of benefits.

Percentage costs for employees for health insurance in 2006 were available for jurisdictions: the range was 0-10%. No actual employee costs were provided for 2007 comparisons. Comparables may or may not be *true* comparables as the comparable cities budget situations are unknown, the state of any local economy is a complex analysis, and

long term planning goals of local government all may affect the picture on the charts. In the end, each local jurisdiction must function and will bargain according to its own particular factors.

Although the City's presentation included various detailed reports on the state of the state's economy, it does not answer the question of whether or not comparables are an "apples to apples" situation. It is further noted that jurisdictions cited by each party were not limited to the southeastern quadrant of the state or to cities of comparable size. Although the southeastern quadrant of the state cannot be said to be booming, it cannot provide the fact finder with a surefire guide to Marietta's position. The comparables are but one factor in the required analysis. The comparables are not controlling by statute.

There is agreement between the parties on one fact: the dramatic increase in health insurance premium costs is unacceptable. The Union presented an alternative provider: the Michigan Teamsters Health and Welfare Fund. Its benefits for health/prescription drug coverage are comparable to that of the current plan. It, unlike the City's current provider, "locks in" a premium rate through 2011. This fact significantly improves the ability to budget the cost of the benefit. Under previous arrangements, the City received notice of its premium amounts annually: the contract year with the current carrier begins February 1.

The City has the ability to add its entire workforce to the IBT Health and Welfare plan. Of course bargaining is not complete with the two other units. But the City has always offered parity in this benefit. What happens to the rest of the workforce is beyond the scope of this decision.

It is possible to consider the City's proposal to increase the employee share of premiums as a prudent reflection of fiscal wisdom. It *may* in some manner work as a cost containment incentive. It is assumed that good health and minimal medical intervention is everyone's desire and goal. But it is also very true that an increase in health insurance (and prescription drug) rate of reimbursement constitutes a reduction of wages. Increase of the deductibles also reduces wages.

It is this writer's opinion that the Union made a more compelling argument for participation in its health and welfare plan.⁶ Its minimum contract commitment is three years.

⁶ The City characterized the IBT plan as "lowball" and raised potential questions about the legal congruence of public and private sector plans. Only argument was presented on this claim. As there is a basic assumption

This will not coincide with the parties' bargaining cycle. It is noted that the current arrangement likewise does not coincide with the bargaining cycle. (I.e. contract expiration date).

Interestingly, the City's first and second bargaining proposals included acceptance of the IBT health and welfare plan-but at an 80%-20% reimbursement rate. For an unexplained reason, the City withdrew its offer to adopt the plan in its last offer prior to this fact finding. It maintained its position throughout fact finding that only Plan 1A or Plan 2A were acceptable.

During fact finding there was clarification offered by the Union about the scope of the plan. The IBT Health and Welfare plan as proposed offers a cornucopia of employee benefits: major medical; prescription drugs; life insurance; dental and optical benefits; and various disability programs .Although the Union proposal included all of the possible components, the City argued that several of the benefits were redundant to benefits currently available by law and contract. Also, the Union made it clear that the plan could be "piece mealed". Thus it is not necessary under the health and welfare plan contract to take "all or nothing". A base/minimum requirement is that all of the IBT members be participants.

The fact finder agrees that there is no reason for the City to purchase premiums for all of the benefits sought by the Union. Indeed the Union proposal makes no counter argument to the City's claim of redundancy. The Health and Welfare disability plan (temporary, partial and long term) and life insurance benefits are available to employees currently either by contract or statutes. The fact finder adopts the City's position on redundancy. The Union did not make a compelling argument to the contrary.

There were assurances made by the Union that the quotes for the insurance were "firm". The fact finder's recommendation therefore assumes the same numbers available and offered in April 2007 will be used for the plan's costs, if this report is accepted. As the Union's "costing out" of the plan assumed inclusion of all the benefits, the actual premium costs should be lower than the quote. The fact finder is accepting the City's costing out exhibit as accurate. It reflects the costs assuming inclusion of only the major medical, prescription, dental and optical coverage under the IBT plan. Although the percentage

present that the parties cannot and would not propose language that conflicts with law, the fact finder will not explore this contention further. The fact finder notes the contract has a savings clause: Article 30.

increase over three years is significant (51%) this is spread over three years. The City's proposed changes in plans only reflects 2007 costs, as its carrier will not and does not guarantee rates from year to year. It is noted that the City's insurance representative indicated the average rate of increase should be figured at 15%. After three years this would be 45%, not so different from the Union proposal. And the City's proposed plan does not provide dental and optical benefits. The City made no specific arguments about this aspect of the IBT plan.

A review of the City's graph explaining the City's costs for the remainder of 2007 shows the following: the Teamster Plan is cheaper. Even though the City's graph assumes the continuation of the current 88-12% split, the savings remain proportional if the percentage changes to 100%. This is true even though the Teamsters plan does not offer a reduced cost for single persons. It is a so-called unitary plan. At present the City has 10 single participants. The cost for those persons will increase.⁷ This is a not uncommon result when the overall economies support the change. Yet for 2007 there still is a savings over the City proposed plans and clearly a savings over the current scenario.

The City correctly notes that the costs under the Teamsters plan will increase over the term of its insurance contract. (The Plan requires a three years minimum term rather than the four stated in the City's brief. Quotes were provided for 4 years.)⁸ But in this writer's experience, rising premiums are an almost unavoidable cost of business. This contract will not resolve that allocation of resources. It is also true that the most economically and administratively viable option is for all city employees to participate in the plan. But although this is a potential outcome, there is nothing in the Teamster plan itself to mandate inclusion of the entire workforce. The other employees have not concluded bargaining; the IAFF fact finder report is not yet issued. The IAFF unit wants this plan; the non organized unit will not be continued per the status quo once this insurance issued is resolved and will no doubt "follow the leader."

The City has argued its small size prevents it from competing in the marketplace for coverage. The Teamster Health and Welfare plan allows it to provide coverage at

⁷ There are 4-5 persons within the bargaining unit that do not receive any City coverage. Under the Union proposed plan, the City would be paying for 4-5 people that it currently does not cover. This factor is not acknowledged in the Union's analysis.

⁸ There is a lack of congruence between the insurance year and the cba term. The parties have worked with this anomaly for years. It is not an uncommon phenomenon for parties to a cba.

significantly lower costs than its current carrier at a fixed premium rate for three and potentially four years. That stability for budgeting purposes is a real benefit to all.

The City also argues that it has a “loss of control” due to the IBT Plan’s trustee structure. But the City provided no explanation how its position is different with the current carrier. Until there is a state or national mandate concerning health care, the City’s position will be that of a shopper rather than an equal bargaining partner. Also, the fact finder takes administrative notice that public employers participate in the AFSCME Health and Welfare plan.⁹ Thus the concept of public employer participation in a union plan is not novel.

A final note on the City’s concerns: it argued that a 100% reimbursement rate for the City prevents the membership from having any incentives to keep costs down. It further notes that this percentage reimbursement rate- 80-20 -applies to units within Washington County government employees and by extension is reasonable for Marietta’s workforce. An employee need to share the costs of insurance is a very common argument from employers. There is no evidence in this record supporting the argument that employee sharing in costs results in lesser premiums. It does result in a mutual desire to keep costs to a minimum.

There is evidence in the record that employees have participated in the costs of insurance for the past twenty years at an 88%-12% reimbursement ratio. The Health and Welfare Plan as proposed reverses the current arrangement to provide for 100% reimbursement for the remaining term of this contract. But even though this is an enhancement, it does not adversely affect the City’s bottom line based upon a preponderance of evidence in the record. As a counter balance to this clear benefit and gain by the employees, it is also mindful to recognize that the last contract serves as a template for future contracts. Therefore, the fact finder recommends that in the last month of the agreement, the employees return to the prior formula: 88%-12%.

Recommendation

The parties accept the Teamsters Plan YDN-26 minus the life insurance and disability benefits *effective* September 1, 2007. The premium rate is locked in at the amount quoted in April 2007. The premiums shall be fully reimbursed at 100% until 11-30-08. At that time, the percentage reimbursement shall be 88%-12%.

⁹ The AFSCME Care plan does not include major medical benefits.

Issue 2. Wages

The Union proposes a dollar an hour increase for the entire unit in 2007 and 2008. Although an exact translation to a percentage is not in the record, the parties generally agreed that this would be a more than 6% increase for the remaining two years of the agreement. This is in stark contrast to local conditions and the state wide average. The Union presented no argument that supported such a large increase. The comparables generally reflect Marietta's place mid or upper range of salaries for like positions. That level of increase does not reflect the parties' past practice.

The SERB analysis shows an average wage increase slightly over 3% statewide. Also, the Union's wages despite the 0% increase last year are not behind their comparables. Factoring in employer paid insurance, there has been an average increase of 5.5% annually since 2000.

The City proposes 1.5% each remaining year. The City pointed out that the Union's wage request was unreasonable and unsupportable. It cited a comparison of the city employees' wages with others in Marietta and Washington County. The City wages are higher at the present time. It also showed the IBT employees income exceeds that of the median non City Marietta citizen. The City argues that the Union's rationale is faulty and its premises unsound. The City argues that 1.5% is in line with current economic realities, is fair and reasonable and is consistent with historical experience.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Certain factors however were not present in the record. Other factors were not relevant to the determination.

The collective bargaining agreement was considered. Translating roughly the cents/hour into percentages, the prior years cited averaged 3%. Other cities throughout Ohio have negotiated an average of 3% increases per the City's comparables. The City supported its position that shows diminished expectations concerning its revenues. Also, it cannot be ignored that the City strives for and usually receives parity in its wage negotiations with the other units. A dollar per hour increase for all members of the IAFF, FOP, and IBT would be a huge increase for this City, well beyond the norm and unreasonable in tough economic times.

The Union failed to put on evidence that countermanded the City's concerns. The Union did not show that unusual conditions, inflation or comparables supported its position of \$1/hour.

There is a surplus/carryover. But it is not in the public's interest to spend down its reserves. The City must be mindful of accounting principles, fixed expenses, the public trust, bond ratings and the inevitable "rainy day".

The Union failed to show these concerns are shallow, over dramatized or otherwise subject to challenge. It is not a classic inability to pay scenario argued by the City. The City is not in a deficit posture or under any oversight by the State. It is rather an unwillingness to pay the sought for increase. But balancing all of the statutory factors, the fact finder finds that 3% is reasonable, fair, equitable, and consistent with the market. SERB's wage report for 2006 showed the average increase in the state was barely over 3%. The City's selected comparables show an average percentage gain of 2.7% from 2003-2008.

The recommended 3% wage increase will be tempered by unknown external economics such as inflation. But there are clearly other improvements recommended in this report. But for one month the employee will carry no costs for its health insurance premiums. This is a significant benefit to employees. The new optical and dental plans provide a virtually no-cost benefit to employees. The co-pays, deductibles for medical and prescription drug benefits expenses are known for the remainder of the contract if the fact finding recommendation is accepted. In exchange, there is a \$500 increase in the family deductible. These new and increased benefits clearly outweigh the sought for wage increase.

Neither party presented the fact finder with its proposed wage increases in a table including the steps. It is anticipated that if this report is adopted by the parties, the appropriate calculations will be made.

Finally, the prospects for the City's financial health and growth are not necessarily as pessimistic as the City presented. The City had a carryover from 2006, received income from 3d party billings, inheritance taxes, and the one time Anthem payment under the demutualization. Income tax revenues have been rising since 1993. The City has not spent more than its budget since 2002. It will realize health

insurance savings if the IBT plan is adopted. The community is issuing new construction building permits. The picture would be much improved if new employers were coming to town, but the permits allow an assumption that there will be more of an income base. The City's counsel pointed out that continued high gas prices have also benefited the City's income base. It is likely that fuel prices will be a fluctuating factor, but it appears unlikely that prices will decline enough to significantly upset the present assumptions about income. The parties will meet again in two years to assess the situation and bargain again.

Recommendation

Addendum 2 - Wages

The bargaining unit shall receive a 3% across the board increase effective January 1, 2007 and January 1, 2008. The steps shall be modified accordingly. All other provisions are unaffected.¹⁰

Respectfully submitted,



Sandra Mendel Furman J.D.

Certificate of Service

An original and true copies of the fact finder report were sent by ordinary US mail on July 6, 2007 to the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215; Greg Scott, 50 West Broad Street, Suite 2600, Columbus, Ohio 43215 and to Susan Jansen, 111 West First Street, Dayton, Ohio 45402. An electronic copy was also sent to the parties' representatives. *Note - server down*



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¹⁰ The parties only opened negotiations on the wage increases; no other language in Addendum 2 was discussed. There is no purpose served by reproducing the balance of the language in this document.