

FACT FINDERS REPORT

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF:

2007 DEC 24 A 3: 34

City of Hamilton

And

Office and Professional Employees International Union
Local 98

Case Number: 07-MED-05-0617

Before: E. William Lewis

Presented to:

Edward E. Turner, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

And

Susan D. Jansen, Esq.
Doll, Jansen & Ford
111 West First St., Suite 1100
Dayton, Ohio 45402-1156

Richard Pennington, President
OPEIU, Local 98
3118 Colerain Avenue
Cincinnati, Ohio 45225

And

Mr. Timothy Werdmann
Assistant Law Director
345 High Street, Suite 710
Hamilton, Ohio 45011

E. William Lewis was selected by the parties to serve as Fact Finder in the above referenced case and duly appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 (C) (3). December 6, 2007 was selected as the hearing date and the parties timely filed the required pre-hearing statements. The hearing was conducted in City Hall, 345 High Street, Hamilton, Ohio.

In their pre-hearing filings one or more of the parties identified the following issues, and or contract provisions as being unresolved:

ARTICLE VIII Hours of Work, Overtime, Call-in Pay

ARTICLE X Insurance Benefits

ARTICLE XX General Wage Adjustment

ARTICLE XXII Duration of Agreement

BACKGROUND:

The City of Hamilton, hereinafter known as the City/Employer, is in the process of bargaining a renewal contract with its bargaining unit composed of Public Health Nurses. The four (4) bargaining unit nurses are represented by the Office and Professional Employees International Union, Local 98, hereinafter known as the OPEIU/Union.

The City of Hamilton, located in Butler County, has a population of approximately 65,000 residents. Of its nine bargaining units, the City is currently bargaining with this unit and four others.

The current CBA, initially scheduled to expire on June 30, 2006, was extended, with modifications, for one year, by the parties. The parties have been bargaining on this successor Agreement since early June 2007. Tentative agreements were reached between the parties on all Articles except for four. At the Fact Finding hearing, prior to taking evidence and testimony, tentative agreements were signed on ARTICLE VIII---HOURS OF WORK, OVERTIME, CALL-IN PAY, and ARTICLE XXII---DURATION OF AGREEMENT. We were unable to reach tentative agreement on the remaining two Articles: ARTICLE X---INSURANCE BENEFITS and ARTICLE XX---GENERAL WAGE ADJUSTMENT.

Therefore, the evidentiary hearing was opened at 11:10am on these two Articles.

The four (4) bargaining unit nurses are all degreed RN's, and classified as Public Health Nurses I. They are part of the Department of Health, which provides healthcare services to residents of the City. Some of their duties include, home visits, operation of the Bureau for Medically Handicapped Children, immunizations for flu and hepatitis B, sexually transmitted disease diagnosis and treatment, newborn babies and mother treatment and health needs assessment, elderly assistance, and the investigation of community communicable diseases. All of the above listed duties carry an educational and training component.

When addressing the unresolved issues the Fact Finder will take into consideration the following factors, pursuant to Division (C)(4)(e) of Section 4117.14 of the Ohio Revised Code:

- (1) Past collective 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 interests 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public or in private employment.

The format of this report will be to list an Article, followed by a brief review of each party's position, and a fact finder discussion regarding the unresolved issue(s). My recommendation will be accompanied by the

Agreement language, when appropriate, reflecting the recommended changes.

ARTICLE X INSURANCE BENEFITS

Section 1. Medical/Surgical/Dental/Prescription

- A. The only open provision, regarding employee premium contributions and Medical Expense Reimbursement Plan (MERP).

CITY POSITION:

The City is proposing to increase bargaining unit member's premium contributions for 2008, from 15% to 20%. Effective 1/1/09, the employee percentage contribution would remain at 20% unless overall premium costs increased five to ten percent. If so, employees would pay twenty-five percent of premium costs. If in plan year 2009, costs increased over ten percent, then employees would contribute thirty percent, unless the City implemented a MERP.

Plan year 2010, in the Employer's proposal, they would leave employee contributions unchanged if premium increases were under five percent. If the increases were between five and ten percent, the employee would pay an additional five percent. Over a ten percent increase, the employee's share would increase by ten percent, unless the City, at its option, implemented a MERP.

Plan benefits, explained the City, are, and have been, designed by a citywide Joint Insurance Committee (JIC). All City employees, bargaining unit or not, are covered by the same benefits plan. The City acknowledges that the JIC has functioned very well over the past number of years.

The Employer referred the Fact Finder to their Exhibit 5-L, showing other internal bargaining units' healthcare provisions, with a twenty percent employee contribution for 2008. Concurrently, they stated that they were not opposed to a "me to", for this unit.

In explanation of the City's MERP proposal, they are proposing that employees who could obtain health insurance through their spouses, could

be required to enroll in their plans. The differential cost would be reimbursed by the City. This MERP, according to the Employer, would help control health insurance costs and reduce the pressure on the stressed General Fund.

UNION POSITION:

The Employer's proposal is unique and unnecessary, and not in other City bargaining unit contracts, claims the Union. The Union noted, that they understood pattern bargaining, and the Employer's proposal is not. Their proposal could cause these four RN's to pay up to thirty percent of the overall premiums, more than double the dollars they are now paying.

OPEIU is proposing a status quo, at fifteen percent, however, they point out the recently ratified AFSCME 911 Operator's contract, which caps employee's contributions at twenty percent. Furthermore, notes the Union, the 911 Operator's MERP provision grants Union or JIC rights, regarding potential implementation.

DISCUSSION:

This is a bargaining unit of four employees, who, as the Union pointed out, has no interest in striking and is not a safety unit. Testimony noted that the 2008 provider will be Humana, and their premium rate will be slightly reduced (-2%).

None of the internal bargaining units' four contracts, introduced as evidence, have a healthcare premium sharing as proposed by the Employer. For 2008, all four of the contracts have an 80/20 premium sharing provision. Furthermore, the City's contract with AFSCME 3785 (911), expiring 7/31/2010, caps the employee's contributions at twenty percent. The twenty percent employee contribution remains unless other bargaining units come up with other cost sharing arrangements, causing a reopening for negotiations.

The Employer proposed Medical Expense Reimbursement Plan, is also addressed in the AFSCME 3785 contract. The MERP can be introduced only in 2008, and it requires a patterned bargaining type acceptance. In the Fact Finder's opinion, a unilaterally implemented plan, such as proposed by

the City, could fail to effectively address plan benefits that might be provided by employers elsewhere.

Both parties, in their arguments on this issue, acknowledged the importance of pattern bargaining. This is especially true when you have a small bargaining unit, as we have here. Internal comparables are extremely relevant when you have a healthcare program that is citywide. Furthermore, the JIC has been functioning for a number of years with approval from both parties. In the Fact Finder's opinion, a pattern has been set on this issue, by AFSCME Local 3785, and it reflects a healthy labor/management approach.

FINDING AND RECOMMENDATION:

ARTICLE X INSURANCE BENEFITS

Section 1. Medical/Surgical/Dental/Prescription

A. To read as follows:

The City shall provide to eligible bargaining unit employees a network plan of medical/hospital/surgical protection as determined by the Joint Health/Benefits subcommittee. It will continue to be packaged with a vision plan and dental coverage unless the subcommittee makes adjustments. A list of the current benefit structure is attached hereto as Addendum # 3. This benefit structure is subject to change in accordance with the decisions of the Joint Health/Benefits subcommittee. The City and the employees shall share in the overall monthly premium costs of the insurance plan in the following manner: for plan year 2008 and beyond, the City shall contribute 80% of the total premium cost and the employees shall contribute 20% of the total premium cost through payroll deduction. Provided, in the plan year 2008, if any other bargaining unit has negotiated a different cost-sharing arrangement, that cost-sharing arrangement will be applied to this unit. If there is more than one (1) alternative cost sharing arrangement negotiated by other bargaining units, the parties agree to meet and negotiate regarding the cost-sharing arrangement for plan year 2008 and beyond.

- B. current language**
- C. current language**
- D. current language**
- E. current language**

F. New, to read as follows: For purposes of Article X, Section A of this Agreement, the term “eligible bargaining unit employee” shall mean employees who are not entitled to and eligible for health insurance coverage elsewhere. Bargaining unit employees who are entitled to and eligible for health insurance coverage elsewhere shall be required to take the health insurance coverage for which they are otherwise eligible and entitled and shall be enrolled in the City of Hamilton Family Medical Expense Reimbursement Plan. This section shall only have application in plan year 2008 if a Medical Expense Reimbursement Plan is adopted by the City and accepted by the FOP or by the Joint Insurance (Joint Health Benefits) Committee.

ARTICLE XX GENERAL WAGE ADJUSTMENT

UNION POSITION:

The Union is proposing a general wage increase retroactive to July 1, 2007, of 4.5% per year. All the bargaining unit members are professional, degreed, registered nurses, with ten or more years of service. According to Union evidence on wages, for Southwestern Ohio, these nurses rank tenth out of thirteen public agencies. This ranking equates to being 15% below entry level, and 4.3% below top rates(UN. Ex.-wages).

OPEIU points out that these nurses are topped out at pay grade 28, with no where to go. Comparable wage data evidences more than ten steps to top, are available to many other public nurses(UN. Ex.)

The Fact Finder was referred to the City’s Comprehensive Annual Financial Report, for year ended 12/31/06. OPEIU pointed out that the economic outlook was other than bleak, and that the overall net City assets increase by over five and one-half million dollars.

CITY POSITION:

The City is proposing the same duration as the Union, with a three percent per year wage increase. Bargaining history of the City and their Unions has been, with miniscule exceptions, a protracted period of 3% per year settlements. Additionally, notes the City, relevant SERB data supports 3% wage increases (E. Ex.-C). Furthermore, a 4.5% wage increase would not be

acceptable to Council, and is not even in-sync with the Union's submitted comparables, notes the Employer.

These employees are paid out of the General Fund, whose primary source is income taxes(E. Ex.-H). Eighty percent of the General Fund's dollars pay for salary and benefits, claims the Employer. The City has lost tax revenue due to loss of industry, resulting in the City being currently classified as a "Situational Distress" Municipality (E. Ex.-G).

The City is not claiming inability to pay. However, they state, that to grant more than a three percent wage increase to this small unit would be fiscally irresponsible, if applied to the large units currently in bargaining. Furthermore, the City and AFSCME's 911 operators just ratified a three year agreement at three percent per year.

The Employer requested the Fact Finder to adopt their three percent proposal.

DISCUSSION:

According to Employer testimony, the General Fund's 12/31/07 year ending balance will be substantially the same as 2006. Not great, but certainly better than the continued decline as budgeted for 2007 (E. Ex.-5 H).

Both parties acknowledge that these employees are professional and skilled. Evidence also shows that they are all topped out in their pay grade. Testimony reported that other City classifications assigned to this pay grade 28, do not require the level of education and certification required of these employees. Schedule G, of this Agreement, lists three pay ranges, 28, 29 and 30. Pay range 28 is currently assigned to the classifications of Public Health Nurse I, and Public Health Nurse I-Early Start; pay range 29 is vacant; and pay range 30-Public Health Nurse II is vacant. Pay range 30, according to testimony, is used for a Lead Nurse.

External comparables (Exhibits), bargaining history, and already agreed to patterns, support the Employer's position of an across the board three percent per year wage increase. There is no doubt that that the current bargaining unit members are at the top of their range, and evidence shows them behind other area public health nurse's top salary. I am recommending

the City's across the board wage increase of 3% three percent per year, effective July 1, 2007, with a merited pay range adjustment for these nurses.

FINDING AND RECOMMENDATION:

ARTICLE XX GENERAL WAGE ADJUSTMENT

To read as follows:

Section 1. Effective at the beginning of the first pay period that includes July 1, 2007, a three percent (3%) general wage increase shall be added to all wages contained on Schedule G.

Section 2. Effective at the beginning of the first pay period that includes July 1, 2008, a general wage rate increase in the total amount of three percent (3%) shall be applied to all pay steps within ranges contained on Schedule G.

Section 3. Effective at the beginning of the first pay period that includes July 1, 2009, a general wage increase in the total amount of three percent (3%) shall be applied to all pay steps within ranges contained on Schedule G.

Section 4. If at any time during the term of this Agreement at least seventy-five (75%) of the entire City of Hamilton employee population enroll for the direct deposit of their paychecks, the City may, at its discretion, require all employees covered by this Agreement to enroll for direct deposit of paychecks.

Effective July 1, 2008, current bargaining unit members at the top of pay range 28 will receive a three percent (3%) wage increase and be moved to pay range 29, step 9 at \$25.90. They shall progress thereafter in the revised pay range 29. See attached Schedule G.

Any inconsistent Agreement language should be adjusted to reflect this recommendation.

SUMMARY

The Fact Finder enjoyed meeting and working with the parties. This will affirm the foregoing Report consisting of 10 pages, and recommendations contained therein, are made in this matter of Fact Finding by the below signed Fact Finder. If there is found conflict in this Report between the Fact Finder's Discussion and Recommendations, the Recommendations shall prevail. All matters of tentative agreement are recommended to be included in the Agreement. All provisions of the Collective Bargaining Agreement that neither party proposed revisions to, are to be carried forward into the new Collective Bargaining Agreement unchanged.

To the best of my knowledge, said Report and its recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

This concludes the Fact Finding Report.

Respectfully submitted this 20th day of December 2007.



E. William Lewis
Fact Finder

SCHEDULE C

28	16.53	17.4	16.31	19.2	20.14	21.01	21.85	22.7	23.57	24.41
Hour										
Bk-Wk	1239.75	1305	1373.25	1440	1510.5	1575.75	1638.75	1702.5	1767.75	1830.75
Annual	32,234	33,930	35,705	37,440	39,273	40,970	42,608	44,285	45,962	47,600
29										
Hour	17.22	18.13	19.08	20	20.98	21.85	22.7	23.57	24.41	25.39
Bk-Wk	1291.5	1359.75	1431	1500	1573.5	1638.75	1702.5	1767.75	1830.75	1904.25
Annual	33,579	35,354	37,206	39,000	40,911	42,608	44,285	45,962	47,600	49,511
30										
Hour	18.08	19.02	20.03	21	22.02	23.15	23.83	24.73	25.63	26.64
Bk-Wk	1356	1426.5	1502.25	1575	1651.5	1736.25	1787.25	1854.75	1922.25	1998
Annual	35,256	37,089	39,059	40,950	42,939	45,143	46,469	48,224	49,979	51,946

2007										
28	17.03	17.92	18.86	19.78	20.74	21.64	22.51	23.38	24.28	25.14
Hour										
Bk-Wk	1,276.94	1,344.15	1,414.45	1,483.20	1,555.82	1,623.02	1,687.91	1,753.58	1,820.78	1,885.67
Annual	33,201	34,948	36,776	38,563	40,451	42,159	43,886	45,593	47,341	49,028
29										
Hour	17.74	18.67	19.65	20.60	21.61	22.51	23.38	24.28	25.14	26.15
Bk-Wk	1,330.25	1,400.54	1,473.93	1,545.00	1,620.71	1,687.91	1,753.58	1,820.78	1,885.67	1,961.38
Annual	34,596	36,415	38,322	40,170	42,138	43,886	45,593	47,341	49,028	50,996
30										
Hour	18.62	19.59	20.63	21.63	22.68	23.84	24.54	25.47	26.40	27.44
Bk-Wk	1,386.68	1,469.30	1,547.32	1,622.25	1,701.05	1,788.34	1,840.87	1,910.39	1,979.92	2,057.94
Annual	36,314	38,202	40,231	42,179	44,227	46,497	47,863	49,871	51,478	53,506

2008										
28	17.54	18.46	19.43	20.37	21.37	22.29	23.18	24.08	25.01	25.90
Hour										
Bk-Wk	1,315.25	1,384.47	1,456.88	1,527.70	1,602.49	1,671.71	1,738.55	1,806.18	1,875.41	1,942.24
Annual	34,197	35,996	37,879	39,720	41,665	43,485	45,203	46,961	48,761	50,499
29										
Hour	18.27	19.23	20.24	21.22	22.26	23.18	24.08	25.01	25.90	26.94
Bk-Wk	1,370.15	1,442.96	1,518.15	1,591.35	1,669.33	1,738.55	1,806.18	1,875.41	1,942.24	2,020.22
Annual	35,624	37,507	39,472	41,375	43,402	45,203	46,961	48,761	50,499	52,526
30										
Hour	19.18	20.18	21.25	22.28	23.36	24.56	25.28	26.24	27.19	28.26
Bk-Wk	1,438.58	1,513.37	1,593.74	1,670.92	1,752.08	1,841.99	1,896.08	1,967.70	2,039.32	2,080.10
Annual	37,403	39,348	41,458	43,444	45,954	47,892	49,298	51,161	53,023	54,083

2009										
28	18.08	19.01	20.01	20.98	22.01	22.96	23.88	24.80	25.76	26.67
Hour										
Bk-Wk	1,354.71	1,428.01	1,500.58	1,573.53	1,650.56	1,721.86	1,790.71	1,860.37	1,931.67	2,000.51
Annual	35,223	37,076	39,016	40,912	42,915	44,769	46,559	48,370	50,224	52,014
29										
Hour	18.82	19.81	20.85	21.85	22.93	23.88	24.80	25.76	26.67	27.74
Bk-Wk	1,411.26	1,485.84	1,563.69	1,639.09	1,719.41	1,790.71	1,860.37	1,931.67	2,000.51	2,080.83
Annual	36,893	38,652	40,656	42,616	44,705	46,559	48,370	50,224	52,014	54,102
30										
Hour	19.76	20.78	21.89	22.95	24.06	25.30	26.04	27.02	28.01	29.11
Bk-Wk	1,481.74	1,558.78	1,641.55	1,721.05	1,804.64	1,897.25	1,952.98	2,026.74	2,100.49	2,182.50
Annual	38,525	40,528	42,681	44,747	46,921	49,329	50,778	52,696	54,613	56,765

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finder's Report was sent by regular U. S. Mail to:

Edward Turner, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th floor
Columbus, Ohio 43215-4213

And

Susan D. Jansen, Esq.
Doll, Jansen & Ford
111 West First Street, Suite 1100
Dayton , Ohio 45402-1156

And

Mr. Timothy Werdmann
Assistant Law Director
City of Hamilton
345 High Street, Suite 710
Hamilton, Ohio 45011

This 20th day of December 2007.



E. William Lewis
Fact Finder