

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD 2008 MAY 12 P 12: 52

In the matter of	*	07-MED-09-0961
	*	
Fact-finding between:	*	
	*	
Toledo Municipal Clerk of Court	*	Fact-finder
	*	Martin R. Fitts
	*	
and	*	
	*	
Local 12, United Auto Workers	*	May 9, 2008
	*	
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**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER**

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**APPEARANCES**

For the Toledo Municipal Clerk of Court (the Employer):

Keith Wilkowski, Attorney  
Vallie Bowman-English, Toledo Municipal Clerk of Court  
Alex Huguelet, Executive Chief Deputy Clerk

For Local 12, UAW (the Union):

Catherine Booher, International Representative, UAW  
Kim Barker, Local 12 Chairperson  
Cindy Downs, Local 12 Committeeperson

Witness:

Carol Bader, Law Department, City of Toledo

## **PRELIMINARY COMMENTS**

The bargaining unit consists of 8 employees of the Toledo Municipal Clerk of Court's Office. The parties had previously bargained, and had reached a settlement on all outstanding issues in December 2007. The tentative agreement was to take effect January 1, 2008. The UAW ratified the agreement, and it was presented to Toledo City Council for ratification on January 29, 2008. The Council rejected the agreement.

The parties then engaged in the statutory fact-finding process under the State Employment Relations Board (SERB). SERB appointed the undersigned as Fact-finder in this dispute on March 13, 2008. A fact-finding hearing was held on May 1, 2008 at the offices of Region 2-B, United Auto Workers in Maumee, Ohio. Prior to the hearing the parties presented the Fact-finder with a written Joint Position Statement. Both parties attended the hearing and elaborated upon their respective positions, presenting both testimony and exhibits. There was one issue that the parties stipulated was reason for the rejection by City Council: the payment of health insurance. Thus this one issue was submitted for fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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; and
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.

Any and all references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their Joint Position Statement presented in writing in the to the Fact-finder prior the May 1, 2008 hearing.

## ISSUES AND RECOMMENDATIONS

### Issue: Payment of Health Insurance

#### **Positions of the Parties**

As noted above, the parties issued a Joint Position Statement to the Fact-finder. The position of both parties was that the previously agreed upon tentative agreement should be implemented, along with a Memorandum of Understanding (MOU) that was reached as part of their negotiations. The MOU provided for a “reverse me-too” provision which states that if the larger bargaining unit in the Clerk’s Office (represented by AFSCME Local 3411) reaches an agreement calling for its members to contribute specified amounts in co-premiums for healthcare, then those same changes would also be incorporated into the instant collective bargaining agreement with the UAW bargaining unit.

#### **Discussion**

As noted in the above Preliminary Comments, the Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J) mandate that fact-finders consider specific criteria in making their findings and recommendations. Due to the somewhat unique circumstances surrounding this proceeding, several of these criteria will be highlighted in the following discussion.

Of the criteria listed in the Preliminary Comments, the first to be considered in this discussion is number 5: *Any stipulations of the parties*. In this regard the Fact-finder notes that the parties jointly stipulated that each believe the MOU is the proper resolution for the issue. The fact that the Employer and the Union agree not only as to the position, but also agree as to the rationale for the position, properly carries significant weight with the Fact-finder.

The Fact-finder is also mindful of the arguments made jointly by the Employer and the Union that the Clerk of Court is an independently elected member of the judicial branch of government, with the legal authority to determine the compensation of the employees in her employ. The parties noted in their Joint Position Statement: *There is “a mandatory duty upon the legislative authority to fund the deputy clerk salaries prescribed by the clerk of courts.” State ex rel Durkin, Clerk v. City Council of Youngstown (1984), 9 Ohio St. 3d 132.* Certainly there must be reasonableness in applying this principle. The parties did demonstrate reasonableness when they executed the MOU, which calls for parity with the other bargaining unit in the Clerk’s office should that collective bargaining agreement provide for co-premiums for its employees. The parties did not dispute the financial constraints facing the City budget. They did express, however, a sense that the Clerk and the Union are in the best position to determine fairness with respect to the timing of implementing any co-premiums upon the members of this bargaining unit.

The next two criteria from the Preliminary Comments to be considered are number 1: *past collectively bargained agreements, if any, between the parties* and number 2: *comparison of 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. Here we begin to get to the heart of the matter.*

Certainly the best comparable labor agreements with regard to this issue of healthcare premium contributions are those multiple labor agreements within the City of Toledo itself. The parties noted that there are numerous bargaining units within the City of Toledo, and that those corresponding labor agreements have followed a clear pattern over the years with respect to the provisions for wages and benefits. Labor contracts are staggered, with AFSCME Local 7 generally coming first in the cycle, and the UAW unit in the Clerk's office coming last. Thus, when other bargaining units receive raises or lump sum payments, the members of the Clerk's UAW unit always receive such raises last. The parties argued that these UAW members are always playing "catch-up". Ms. Bader testified that this characterization by the parties was an accurate depiction of how the multiple collective bargaining agreements within the city have been negotiated over time. She agreed with the parties stipulation that this bargaining unit's contract has lagged behind the other agreements in providing wage and benefit improvements or changes.

The parties stipulated that the City has begun asking its employees to pay a portion of the cost of their health insurance. They noted that while the topic of employee contributions to health insurance is on the table in the City's negotiations with its labor organizations, no contribution is being made by any of the following labor organizations: AFSCME Local 7 (850 members), AFSCME (9-1-1 unit), AFSCME Local 3411 (76 members), Toledo Police Patrol Officers' Association (675 members), Toledo Firefighters Local 92 (466 members), Teamsters Local 20 (235 members).

The parties noted that the Council itself has agreed to pay the same \$25, \$40 and \$55 for health insurance that it is asking of the City's employees. They argued, however, that it was inappropriate to compare the situation of part-time employees (the Council Members) who already receive full-time benefits, with the contribution being asked of the UAW unit. The parties also noted that the City's Exempt Employees and its Fire Command Officers are now paying a portion of their health insurance costs, but argued that those are also not properly compared to the Clerk's UAW unit because: (1) those executive level employees are paid far in excess of what the Clerk's UAW employees make; and (2) once again, those employees have had the benefit of the City's wage increase cycle before having to contribute to health insurance costs.

The parties did state that the City's labor agreement with AFSCME Local 2058 (which they characterized as the bargaining unit most similar to this UAW unit) calls for employees to pay a portion of its health insurance costs on a \$25-\$40-\$55 sliding scale. The parties stated, however, that while Local 2058's three-year wage increase began in June of 2006 its members' contribution to health insurance premiums did not begin until more than a year later, in September, 2007. From the data presented at the hearing and confirmed as accurate by Ms. Bader, the wage increases provided for in the AFSCME Local 2058 CBA for the years 2003 through 2008 correspond directly to those provided for in the Clerk's UAW agreement for the years 2005 through 2007 and proposed for 2008 through 2010, as seen in the tables below:

**AFSCME Local 7 Contract Covering Years 2003 to 2005**

2003: 0.0% raise; 1% lump sum payment  
2004: 2.0% raise  
2005: 2.0% raise

**AFSCME Local 7 Contract Covering Years 2006 to 2008**

2006: 1.5% raise  
2007: 2.0% raise  
2008: 3.0% raise

**Clerk's UAW Contract Covering Years 2005 to 2007**

2005: 0.0% raise  
2006: 2.0% raise  
2007: 2.0% raise; 1% lump sum

**Clerk's Proposed UAW Contract Covering Years 2008 to 2010**

2008: 1.5% raise  
2009: 2.0% raise  
2010: 3.0% raise

The parties stated that the past collectively bargained agreements of this bargaining unit have clearly lagged behind in wage and benefit gains of the other labor agreements within the City of Toledo. According to this well-established pattern, the Employer and the Union argued that it would be fundamentally unfair to require that this unit be among the first to reduce their compensation by making contributions toward health insurance. Rather, they argued, the pattern would dictate that this bargaining unit should be among the last bargaining units to make such premium contributions.

Both the Employer and the Union acknowledged that, given the present economic environment, employee contributions toward healthcare premiums were inevitable. To that end, the Employer and the Union reached an agreement (in the MOU) for a so-called "reverse me-too" clause stating that the members of the Clerk's UAW unit will begin making monthly payments toward their health insurance if at any time during the term of the agreement, AFSCME Local 3411 (also a Clerk's unit) begins making such payments. The parties stated that even though nearly every other bargaining unit will have had the full benefit of their 1.5, 2 and 3 percent raises during this collective bargaining cycle without making contributions to health insurance, the Clerk's UAW unit was willing to accept this provision at a point sooner in the bargaining cycle than other labor units would.

The next criterion specifically enumerated in the statute and guidelines and considered by this Fact-finder is number 3: *the interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed.* In this regard, the parties noted that there are only 8 employees in this bargaining unit. If the healthcare premium proposed by the City with its other bargaining units (the \$25-\$40-\$55 sliding scale for premium contributions) were immediately implemented, the maximum savings to the City (assuming all 8 employees paid for family coverage) would be \$5,280 during the life of this agreement. The parties argued that these savings would be minimal in consideration of the entire City budget.

As this unit represents only 8 employees in the Clerk's Office, the costs to initiate and administer this premium contribution would likely further reduce the cost savings to the City. The Fact-finder notes that the joint proposal of the parties, as outlined in the MOU, which would tie the initiation of co-premiums for this unit with the other, considerably larger, bargaining unit within the Clerk's Office, makes far more administrative and management sense for the Employer.

Other factors were also considered by the Fact-finder in reaching the Recommendation outlined below. Primary among them is the fact that employees of the Clerk's UAW unit have already been doing their share to help the City through tough budget times. The parties noted that the employees have handled ever increasing case loads (a 31% increase from 2003 to 2007) with the same or fewer employees. And they have handled this workload while reducing overtime expenditures from \$200,388 in 2001 to \$115,234 in 2003 to only \$43,951 in 2007. At the same time, the employees have increased revenue to the City's General Fund from \$2.8 million in 2001 to \$3.1 million in 2003 to \$4.2 million in 2007. The parties believe that the employees of the Clerk's office have clearly pulled their weight and more when it comes to helping the City through tough economic times.

## **Findings and Recommendation**

In consideration of the statutorily required criteria and other factors discussed above, including all the testimony and evidence presented at the hearing, the Fact-finder finds that the joint position of parties, including the Memorandum Of Understanding, are reasonable and fair to the Employer, the Union, and to the taxpaying public.

It would simply be unfair to impose cost-sharing provisions for healthcare into this collective bargaining agreement without considering:

- 1) the stipulations of the parties;
- 2) their place in the well-established pattern of bargaining for the other City labor agreements relative to receiving increases in wages and benefits;
- 3) the minimal cost savings to the Employer versus the administrative ease of instituting such a co-premium if and when it becomes incorporated in the collective bargaining agreement for the considerably larger bargaining unit (Local 3411) within the Clerk's Office; and
- 4) the fact that the parties' Memorandum of Understanding clearly states the parties commitment to incorporate co-premiums at the same time that any corresponding co-premiums become effective in the Local 3411 agreement, notwithstanding the clearly established bargaining pattern that would arguably call for such a benefit change to be delayed until further along in the duration of the Local 12 agreement.

Therefore, the Fact-finder recommends the Joint Position of the parties, including the Memorandum of Understanding (attached and considered a part of this Fact-finding Report).

## **Additional recommendations of the Fact-finder**

In their Joint Position Statement and at the hearing the parties expressed to the Fact-finder that they had reached agreement all other issues during their negotiations.

The Fact-finder has reviewed all the agreements reached by the parties during their negotiations, and finds them also reasonable and fair to both of the parties and to the public.

Therefore, the Fact-finder recommends all agreements reached by the parties during their negotiations.



Martin R. Fitts  
Fact-finder  
May 9, 2008

**MEMORANDUM OF UNDERSTANDING BETWEEN  
CLERK OF TOLEDO MUNICIPAL COURT AND UAW LOCAL 12  
"REVERSE ME TOO" – HEALTHCARE CHANGES**

**The Clerk of Toledo Municipal Court and UAW Local 12 have reached an agreement over the terms for a new 3-year collective bargaining agreement effective January 1, 2008. Five units, AFSCME Local 7, the Toledo Police Patrolman's Association (TPPA), the Toledo Police Command Officers Association (TPCOA), AFSCME Local 2058, and AFSCME 3411 are covered under the City Health Plan with Local 12. The Clerk and Local 12 have agreed to a three-tier formulary prescription drug program, increases to office visit and emergency room co-pays conditioned on the formulary drug and office visit / emergency room changes becoming effective for these units as well as Exempt Employees.**

**For the purpose of the 2007 labor negotiations, the Clerk and Local 12 have accordingly agreed to the following "me too" provision concerning Article 17. Any changes will not become effective unless and until they become effective for the other specified bargaining units under the City's health care as provided to the Clerk's office.**

**If AFSCME 3411 agrees to the City's proposed monthly co-premiums currently paid by Exempt and AFSCME 2058 ( \$25-single, \$40 employee plus one, and \$55 for a family) either by agreement or through an accepted or deemed accepted Fact-finding recommendation, or through interest arbitration , then these same changes will also then be implemented for UAW the same time that they become effective for AFSCME 3411.**

**If the City does not succeed in securing increases in co-premiums, but succeeds in securing other healthcare concessions, Local 12 may opt to accept the other concessions rather than the co-premiums.**