

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

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In the Matter of Fact Finding Between:

City of Columbus, Ohio

and

S.E.R.B. CASE NO. 08-MED-05-0643

Columbus Municipal Association of
Government Employees, Communications
Workers of America Local 4502
(CMAGE/CWA Local 4502)

Appearances:

For the City: Ronald G. Linville, Esq.
Baker & Hostetler, LLP
Columbus, Ohio

For the Union: Jonathan C. Wentz, Esq.
Barkan Neff Handelman Meizlish, L.L.P.
Columbus, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan
Fact Finder

Background:

This case came on for hearing in Columbus, Ohio on December 29, 2009. The bargaining unit is comprised of approximately twelve hundred (1200) supervisory, managerial, professional, and technical employees who are responsible for providing, or for managing and supervising, the delivery of a wide range of City services, such as providing safe drinking water, elderly care services, refuse collection, operation of the City's parks and recreation facilities, transportation, and technology. Indeed bargaining unit employees are assigned to nearly every City Department.

These Fact Finding proceedings concern the parties' negotiations for a successor agreement to their August 24, 2005 through August 23, 2008 Agreement. As of Fact Finding, the parties were continuing to operate under the terms of the expired 2005 Agreement.

In arriving at the Recommendations herein, the Fact Finder has taken into account and relied upon the statutory criteria set forth in O.R.C. 4117.14(G)(7)(a) through (f), to wit: the factors of past collectively bargained agreements; comparisons 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; the interest and welfare of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments or the normal standard of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in public or in private employment, whenever the parties invoked the applicability of such a factor.

The expired predecessor Contract may be referred to herein as the current or predecessor Contract.

In their pre-hearing statements, and as reiterated at Fact Finding, the parties advised that most of the provisions for the terms and conditions of employment of the bargaining unit for their successor agreement had been resolved by the parties in accordance with the terms of the parties' Tentative Agreement of September 16, 2009 (received in evidence as Union Exhibit No. 2) which Tentative Agreement had been rejected by the Union's membership on September 24, 2009, but that nonetheless several issues remained "open" for the Fact finder's consideration and recommendations.

Accordingly, at the outset of the Fact Finding proceedings, the undersigned, as required by the State Employment Relations Board, suggested that the parties, with the assistance of the undersigned, acting as mediator, undertake an effort to mediate their remaining unresolved and open issues. In my view, given the significant length of time that both parties have persevered and engaged in ongoing collective bargaining in the face of very difficult circumstances, for the terms and conditions of employment involving a large and complex bargaining unit, namely, commencing in the summer of 2008, up through the reaching of a tentative agreement on all issues on 9/16/09, and indeed subsequent to the Union membership's rejection on 9-24-09 of the Tentative Agreement of 9-16-09, it seemed to me that a mediated settlement of the remaining unresolved issues involving parts of Article 11, 15, 17 (and Side Letter #9 relative thereto), 18, and 27, was very possible. More particularly, as of the commencement of these Fact Finding proceedings, Article 11 – Vacation, Section 11.2(A) and Section 11.2 (B) remained an "open issue" in these proceedings; and Article 15, Hours of Service & Overtime, part of Section 15.4(B) remained an "open issue" in these proceedings; and Article 17 – Salaries &

Compensation, Section 17.1(A)(1), Section 17.1(A)(2), and part of Section 17.2, including a side letter, relative thereto, namely, SIDE LETTER #9, remained an “open issue” in these proceedings; and Article 18 – INSURANCE, Section 18.2 COST, first paragraph thereof, remained an “open issue” in these proceedings, and Article 27 – DURATION remained an “open issue” in these proceedings.

And indeed, through the diligent good faith efforts of the parties’ respective negotiating teams, and particularly their respective chief spokespersons, Counsel Linville for the City, and Counsel Wentz for the Union, with some assistance from the Undersigned, the parties reached agreement on some of the “open issues” and narrowed the difference between their respective positions on other issues referenced above. Thereafter, Messrs. Linville and Wentz argued their clients’ respective positions to the Fact Finder.

Concerning the Undersigned’s “assistance” to the parties in the mediation sessions, and in issuing this Report, such was informed by the factors outlined in Ohio Revised Code Section 4117.14(G)(7) (a) through (f), to the extent that the parties put these factors into play by virtue of their contentions, positions and supporting evidence referenced in their pre-hearing position statements, and reiterated and elaborated upon, argued, and counter argued in the course of the mediation sessions through the end of fact finding proceedings.

RECOMMENDATIONS:

In conformance with the above, the Fact Finder Recommends as follows:

“All provisions contained in the Rejected Tentative Agreement not modified below shall be incorporated into the parties’ new Agreement.”

I begin with the last issue addressed by the parties. In the course of the mediation sessions on December 29, 2009, to resolve the parties’ differences with respect to Article 27 –

DURATION, paragraph 1, and through the end of the fact finding hearing, the City took the position that said provision should provide for an expiration date of August 23, 2011. The City argues that an August expiration date comports with past collectively bargained agreements and should obtain here as well.

In the course of the mediation sessions on December 29, 2009, to resolve the parties' differences with respect to Article 27 – DURATION, paragraph 1, and through the end of the fact finding hearing, the Union took the position that said paragraph in the parties' successor Agreement should provide for an April 23, 2011 expiration date rather than an August expiration date. More particularly, the Union seeks the following provision:

ARTICLE 27

DURATION

REPLACE PARAGRAPH 1 OF THE REJECTED TENTATIVE AGREEMENT WITH THE FOLLOWING: “This Agreement shall be effective when executed by authorized representatives of both parties and shall remain in full force and effect until 11:59 p.m. on April 23, 2011. It shall automatically be renewed from year to year thereafter unless either party shall notify the other in writing at least sixty (60) days prior to the April 24th anniversary date that it desires to modify this Agreement. In the event such notice is given, negotiations shall begin no later than forty-five (45) days prior to the anniversary date.”

All other provisions in Article 27 shall be as set forth in the rejected Tentative Agreement.

In support of its position the Union notes that the Tentative Agreement of 9/16/09 strayed from past collectively bargained agreements, such that varying from the pattern of past collectively bargained agreements was deemed acceptable to the City at that juncture. Then, too,

notes the Union, its leadership election is conducted in October 2011. The Union points out that collective bargaining and officer elections are resource-intensive efforts for all labor organizations. CMAGE/CWA members have the right to focus their attention and their organizational resources on obtaining a new contract. To the extent elections and contract expiration can be bifurcated, that is the outcome preferred by the Union's members.

In my judgment, on balance, the Union's position is more persuasive and such shall be Recommended.

ARTICLE 11

VACATION

SECTION 11.2(A): AS SET FORTH IN THE REJECTED TENTATIVE AGREEMENT:

"In addition to the earned vacation accruals, effective no later than two (2) full pay periods after acceptance of this Agreement by City Council, a one-time deposit of twenty-four (24) hours shall be added into the vacation bank of each bargaining unit member employed on the date of City Council acceptance of this Agreement. These hours are subject to all other provisions of Article 11."

SECTION 11.2(B): AS SET FORTH IN THE REJECTED TENTATIVE AGREEMENT:

"The Maximum Vacation Balance shall temporarily be increased to accommodate the twenty-four (24) hour deposit for those bargaining unit members employed as of the effective date of acceptance of this Agreement by City Council. Therefore, affected bargaining unit members may utilize the twenty-four (24) hour deposit on or before January 22, 2011." Note: Maximum Vacation Balance Chart adjusted as set forth in the rejected Tentative Agreement.

All other provisions in Article 11 shall be as set forth in the rejected Tentative Agreement.

ARTICLE 15

HOURS OF SERVICE AND OVERTIME

SECTION 15.4(b): ADD AS NEW SENTENCE THREE AS SET FORTH IN THE REJECTED TENTATIVE AGREEMENT: “Effective no later than two (2) full pay periods following acceptance of this Agreement by City Council, double time will be capped at fifty-six (56) hours in a seven (7) day work period; any hours worked beyond fifty-six (56) hours in a seven (7) day work period will be at time and one-half, if applicable.”

All other provisions in Article 15 shall be as set forth in the rejected Tentative Agreement.

ARTICLE 17

SALARIES AND COMPENSATION

SECTION 17.1(A)(1): REPLACE THE REJECTED TENTATIVE AGREEMENT WITH THE FOLLOWING: “A one percent (1%) percentage base increase (PBI) will be effective on August 24, 2008, which will be deferred to the beginning of the pay period that includes January 1, 2010; a two and one-half percent (2.5%) PBI will be effective beginning the first pay period that includes January 1, 2010; and a two and one-half percent (2.5%) PBI will be effective beginning the first pay period that includes January 1, 2011.”

SECTION 17.1(A)(2): REPLACE FIRST NEW PARAGRAPH TO SECTION 17.1(A)(2) OF THE REJECTED TENTATIVE AGREEMENT WITH THE FOLLOWING:

“However, the parties agree that the pay structure will increase one percent (1%) on a one-time

basis effective August 24, 2008. Any member whose pay rate falls below the new minimum will retain that rate until the pay period including January 1, 2010. At that point, those members must receive increase amounts that are, at minimum, equal to the new pay grade minimums.”

SECTION 17.2: REPLACE PARAGRAPH 1 OF THE REJECTED TENTATIVE AGREEMENT WITH THE FOLLOWING:

“For full-time non-seasonal employees, that portion of an employee’s contribution made to the Ohio Public Employees Retirement System equal to ten percent (10%) of the employee’s earned compensation shall be picked up (assumed and paid) on behalf of the employee, and in lieu of payment by the employee, by the City of Columbus.

Effective the pay period which includes June 1, 2010, for full-time non-seasonal employees, that portion of an employee’s contribution made to the Ohio Public Employees Retirement System equal to nine percent (9%) of the employee’s earned compensation shall be picked up (assumed and paid) on behalf of the employee, and in lieu of payment by the employee, by the City of Columbus.

Effective the pay period which includes April 1, 2011, for full-time non-seasonal employees, that portion of an employee’s contribution made to the Ohio Public Employees Retirement System equal to eight percent (8%) of the employee’s earned compensation shall be picked up (assumed and paid) on behalf of the employee, and in lieu of payment by the employee, by the City of Columbus.

The provisions of this Section shall apply uniformly to full-time employees, and no such employee shall have the option to elect a wage increase or other benefit in lieu of the payments provided herein.”

SIDE LETTER #9

September 9, 2009

Jonathan C. Wentz, Esq.
CMAGE/CWA Local 4502 Chief Negotiator
360 South Grant Avenue
Columbus, Ohio 43216

Dear Jon:

SUBJECT: Section 17.1 (A)(2)

There was a moratorium placed on merit pay due to budgetary restrictions for any merit reviews qualifying on or after February 9, 2009. Any merit reviews for employees whose classification seniority dates fell between August 23, 2008 and February 9, 2009 were processed for merit pay, if appropriate.

The parties agree that any merit increases given since August 23, 2008 are not subject to retroactivity based on the one-time one percent (1%) pay structure movement.

This letter has no impact on settlement discussions regarding Grievance Numbers 0012-2009 or 0015-2009.

If the foregoing accurately reflects our agreement, please sign in the space provided below.

Sincerely,

Janet J. Campbell Lanza
City's Chief Negotiator.

All other provisions in Section 17 shall be as set forth in the rejected Tentative Agreement.

ARTICLE 18

INSURANCE

18.2: FIRST PARAGRAPH AS SET FORTH IN THE REJECTED TENTATIVE

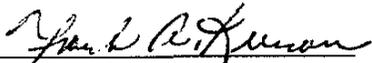
AGREEMENT: “The monthly premium for all full-time employees who participate in the City’s insurance programs shall be an amount equal to nine percent (9%) of the negotiated insurance base. Effective April 1, 2011, the monthly premium for all full-time employees who participate in the City’s insurance programs shall be an amount equal to ten percent (10%) of the negotiated insurance base. The negotiated insurance base shall be the total actual cost to the City of the claims and administrative fees for medical, dental, vision and prescription drugs for employees in this bargaining unit. The premium will be established as single and family rates. The employees’ portion of insurance coverage will be deducted from paychecks as is currently practiced. One-half (1/2) of the monthly premium will be deducted each pay period not to exceed the total monthly premium.”

All other provisions in Article 18 shall be as set forth in the rejected Tentative Agreement.

It is further recommended that the parties’ successor Agreement read with respect to Article 27 – DURATION as per the Union’s position, more fully set forth hereinabove.

This concludes the Fact Finder’s Report and Recommendations.

Date: January 20, 2010



Frank A. Keenan
Fact Finder

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January 20, 2010

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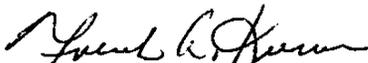
STATE EMPLOYMENT
RELATIONS BOARD

Re: CMAGE Communications Workers of America and City of Columbus, S.E.R.B. Case
#08-MED-05-0643 (Fact Finding)

Gentlemen:

Please find enclosed the Report and Recommendations of the Fact Finder in the
above-captioned matter.

Very truly yours,



Frank A. Keenan, Esq.
Fact Finder