



STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO

2009 DEC -4 P 2: 06

STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	08-MED-08-0786
	*	08-MED-08-0787
Fact-finding between:	*	
	*	Fact-finder
City of Columbus	*	Martin R. Fitts
	*	
and	*	
	*	
Fraternal Order of Police, Capital City Lodge No. 9	*	December 2, 2009
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the City of Columbus (the Employer):

Ronald G. Linville
Baker & Hostetler

For the FOP (the Union):

Russell Carnahan
Hunter, Carnahan, Shoub & Byard

PRELIMINARY COMMENTS

This Fact-finding proceeding included two bargaining units of sworn police officers of the City of Columbus: (1) all full-time, sworn police officers below the rank of Sergeant, and (2) all full-time, sworn police officers holding the rank of Sergeant and above, but excluding the Chief of Police and the Deputy Chiefs. Both units have traditionally bargained together and been included in a single collective bargaining agreement. The current agreement expired on December 8, 2008. At the beginning of 2008 there were approximately 1,921 members in the two (2) bargaining units. The State Employment Relations Board (SERB) appointed the undersigned as Fact-finder in this dispute on May 26, 2009.

A Fact-finding hearing was convened on October 13, 2009 at City of Columbus facilities located at 1250 Fairwood Avenue in Columbus, Ohio. Mediation was conducted on that day, with Fact-finding conducted on October 14 & on October 22. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. The parties also submitted Post-hearing Briefs.

The parties commenced the fact-finding process with a total of eight (8) issues in dispute. During the course of the hearing, and through mediation, the parties were able to reduce the number of issues, as follows:

- Six issues originally presented to the Fact-finder (in pre-hearing statements) were removed from consideration during mediation and fact finding. Per the parties' agreement, if the Fact-finder's decision is not rejected by either side, those issues will revert to "current language". If the Fact Finder's decision is rejected by either side, then both parties are free to bring any of the six issues (which were removed from fact finding) to conciliation.
- Wages/Pension Pick-up and Insurance were presented to the Fact-finder for determination. For the record, the Employer considered the Wage issue and the Pension Pick-up issue to be two separate issues.
- All other issues not encompassed by the foregoing discussion are considered "resolved" – either through written tentative agreements or through the parties' mutual understanding that such issues will remain "current language".

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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented to the Fact-finder at the October 13, 14 & 22, 2009 hearing.

GENERAL REMARKS

The parties presented considerable evidence and testimony regarding their respective positions. The main focus of the record was the view of each party with regard to the economic condition of the City of Columbus, and the outlook for the next several years during the life of the new collective bargaining agreement. A number of witnesses for both parties provided testimony and explanations of the information that was presented.

It is noted for the record that the parties conducted themselves in an extremely professional manner and the day of mediation and the two days of Fact-finding hearing proceeded smoothly, and the exhibits provided were orderly and well-prepared. Given the volume of exhibits and the number of hours of testimony presented, this was extremely helpful to the Fact-finder.

The Fact-finder does not wish to recite in this Report all of the information and data presented by the parties, but will attempt to focus solely on the testimony and evidence that was found to be the most compelling with regard to the Recommendations contained herein. The parties should be assured, however, that the entire record and entire list of exhibits were reviewed at length and considered by the Fact-finder in making these Recommendations.

As the three outstanding issues all revolve around economics, it is proper to note here the over-riding economic factors that paint the immediate past and the current financial picture for the City.

There is no question that the last several years have been challenging to the City of Columbus, just as they have been for all public employers in Ohio. Services were cut,

and some layoffs occurred. As a result of the challenging economic times, the citizens of Columbus passed a tax increase last August (raising the income tax rate from 2% to 2.5%) that will result in an estimated \$90 million infusion of funds into the general fund in 2010. The City committed to use the tax increase for the restoration of services. Given that the income tax is the largest source of revenue for the general fund, this increase of roughly 25% in the income tax revenue improves the financial future for the City even if the short-term economic outlook may not be as bright as the City's economy has historically been.

Of course the City was correct in its argument that the entire \$90 million cannot prudently be made available solely to safety services, let alone entirely to increases in benefits and wages to this bargaining unit. To its credit, the Union made no such argument. It noted that it was well aware of the poor financial condition of the City prior to the income tax increase, and stated it had proudly and loudly supported its passage.

The Employer presented testimony that expressed caution and concern that the tax increase in and of itself does not portend an end to concern for finding efficiencies and cost savings in City services, and to be fiscally prudent in allocating the revenue generated by the new income tax rate. However, the tax increase does present a new and significant source of revenue for the general fund which makes the Employer's regressive proposals for health insurance and pension pick-up unwarranted. If the Fact-finder were to recommend the Employer's proposals in total, they would represent an extremely regressive contract at a time when the City's finances no longer call for such measures. The Employer correctly argues that the passage of the income tax hike does not give the City license to pay unwarranted wage and benefit increases. However, the passage of the tax increase does allow the Employer some ability to continue to pay fair wages and offer fair benefits to all of its employees, including those in this bargaining unit, without seeking reductions across the board in all areas.

Certainly no one knows where the local economy is heading over the next 24 months, but historically the Columbus economy has fared better than most areas in the state. Combined with the recent tax increase, the economic future most certainly lies somewhere between the respective forecasts provided by the parties in detail at the hearing. This is not to say that either party is wrong in their respective outlook, but the combination of the employment mix within the City limits and the long history of reasonably steady economic growth in the City suggest that the City will fare well in the long run, and with the recent tax increase providing a significant boost in revenue in the short run, the City will have the resources to fund the Recommendations contained in this Report without hindering its ability to restore other services as promised to the public when the tax hike campaign was undertaken.

The Recommendations outlined below provide a balance between the City's need to continue to be fiscally prudent, the bargaining unit's desire for a reasonable wage increase and the maintenance of reasonable benefits, and the tax-paying public's right to know that its taxes are efficiently and strategically spent.

ISSUES AND RECOMMENDATIONS

Issue: Article 20.2 – Pension Pick-up

Positions of the Parties

The Employer proposed to eliminate or reduce the pension pick-up.

The Union proposed the continuation of the present pension pick-up, which is currently 7.5%

Discussion

This issue is inextricably linked to the Wage issue. As such, it will be dealt with first in this Report, with the understanding that the wage Recommendations outlined below are linked to the Recommendations for this issue.

First it is important to note that one of SERB's criteria for Fact-finder's is the consideration the past collectively bargained agreements, if any, between the parties. The testimony of both Employer witness Hugh Dorrian (longtime City Auditor) and Union witness Rick Weisman (Director of Labor Services for the National FOP who was involved in negotiations for FOP Capital City Lodge 9 with the City of Columbus for approximately 20 years) made it clear that the origin of the pension pick-up was not to provide the bargaining unit members with a new fringe benefit, but rather to provide them with cash in their pockets in a form other than a wage increase in 1982 that would receive less scrutiny than a larger wage increase. And it is abundantly clear that both parties have treated the pension pick-up and wage increases as a single item in contract negotiations since then until the instant negotiations.

The City's own AON Study was cited by both parties relative to this issue. The Employer noted that the study recommends a phasing out of this benefit over a ten-year period of time. The Union noted that AON went on to state that "the base pay of current employees should be increased in concert with any reduction in pension pick-up." The Union noted that it did not object to the replacement of the pension pick-up if it were replaced on a dollar for dollar basis in wages. It was noted at the hearing by the Union that it had never proposed pension pick-up in lieu of an actual increase in wages; that it has always preferred to have the cash in the form of a wage increase rather than pension pick-up. It opposes the City's proposal now from that standpoint of the actual effect that the elimination of the pension pick-up would have of reducing cash compensation for these employees, as the City has not proposed a dollar for dollar replacement into wages.

The AON study also noted that the should the pension pick-up be phased out and replaced by an increase in the base wage, the employees will benefit at retirement as their base wage, upon which retirement benefits are calculated, will be higher. Although not stated in the AON report, it is also a fact that the employees will benefit from overtime pay as well, as that is also calculated using the base wage. This is important to state here, as this benefit to the bargaining unit members will have a lasting effect far beyond the remaining two years of this contract's duration.

There is also no question that the evidence provided by the City indicates a much more sophisticated view is now taken by the public as to the actual wage costs for this bargaining unit and others in the City, and that there is no longer a benefit to the parties to hide part or all of a wage increase in the form of pension pick-up.

It is simply unreasonable for the bargaining unit members to pay the draconian price of losing this form compensation in its entirety without receiving a corresponding increase in base wages in return, as that would result in a wage decrease that is simply not justified by the City's current financial situation. Considering the recommendations of the AON study, past bargaining history of the parties, and the corresponding benefits to the employees for the phasing out of the pension pick-up with a corresponding increasing in base wages, the Fact-finder believes it is reasonable to begin this process in years two and three of the new agreement.

Findings and Recommendation

The Fact-finder finds the Employer's argument for the reduction of the pension pick-up to be compelling as far as being a long-term goal, but believes to completely eliminate it in the term of a single contract would be very unreasonable without a corresponding percentage wage increase added to any other additional wage increase. In addition, by beginning the phase-out of pension pick-up in years two and three of this agreement, the parties will have the opportunity to see where the City's finances are in two years, see where public sentiment is as well, and determine if they want to accelerate or change the rate of phasing out this provision in the next agreement.

As Mr. Dorrian stated in his testimony, a one percentage point trade off (reduction in pension pick-up for increase in wage rates) on an annual basis seems a fair and equitable way to achieve the ultimate elimination of this item over time. The Fact-finder agrees, and therefore recommends a wage increase below that includes an additional one-percentage point increase in each of the last two contract years to off-set the proposed reduction of one percentage point of pension pick-up in each of the last two years of the contract. This will provide the Employer movement toward its goal of eliminating the pension pick-up, while protecting the level of compensation that the employees are receiving.

It is important to note that this Recommendation is fairly fiscally neutral for the City, as the reduction in pension pick-up will be mirrored by a corresponding percentage increase

in wage rates. Therefore resulting in only a slightly increased cost to the City, but helping the City achieve its publicly stated goal of eliminating pension pick-up from this collective bargaining agreement.

Therefore the Fact-finder recommends that the pension pick-up in Article 20.2 be amended to read that there will be a 6.5% pension pick-up in the second year of the agreement and 5.5% in the third year.

Issue: Article 20.1 – Wages

Positions of the Parties

The Employer proposed a 0% wage increase for the first year of the contract (12/08 – 12/09); a 1% wage increase for the second year of the contract (12/09 – 12/10); and a 2% for the third year of the contract (12/10 – 12/11).

The Union proposed a 4.6% wage increase for the first year of the contract (12/08 – 12/09), including reducing retroactive pay by five (5) unpaid days; a 4.6% wage increase for the second year of the contract (12/09 – 12/10); and a 4.6% wage increase for the third year of the contract (12/10 – 12/11).

Discussion

The Employer proposal would have had significant merit had the City not boosted its income tax revenue significantly through the tax increase. However, with around \$90 million in additional general fund revenue available in beginning in 2010 (actually increased revenue beginning in late 2009) a 0% in year 1, 1% in year two, and 2% in year three are no longer supported by the City's economic condition. Additionally, the linking of the pension pick-up reduction to wages as discussed above must also be factored in by the Fact-finder.

On the other hand, the Union's proposal is also unwarranted. While its first year proposal for a 4.6% increase would be greatly reduced by the proposal to deduct five furlough days, the base wage rates would increase significantly, affecting the Employer's expenditures for pension contributions, overtime calculations and other such costs. Additionally, the significant increase in the base wage rate would have an on-going impact on 2010, 2011, and beyond. Likewise, locking in the City to a 4.6% increase for year two and then again in year three could prove troublesome to the City as it will likely continue to feel the effects of the economic downturn for the remainder of the duration of this agreement, despite the tax increase.

Also considered here is the argument that this bargaining unit has slipped relative to the historical position its wages to the wages received by police officers in surrounding communities. While that may be true, it is unreasonable in the current uncertainty of the economy, even in consideration of the tax increase, to expect a major shift in a single contract term.

Given the stability and additional revenue that the tax increase will now be bringing to the City, a small wage increase in the first year of the agreement, with no deduction for furlough days, makes the most sense. While reducing the retroactive wage increase in year one by some number of furlough days might be somewhat symbolic, it seems an unnecessary administrative exercise at this point as the tax increase was passed, improving and stabilizing the City's financial outlook. Therefore while the year one wage increase is much smaller than the Union's proposed 4.6%, the bargaining unit members should keep in mind that its proposal for 5 furlough days to be deducted from a year one increase would have significantly reduced the net effect of the Union's wage proposal.

A larger wage increase is recommended for the second and the third years, and an additional one percent is also recommended in each year to offset the pension pick-up reductions recommended for those years. The larger wage increases are reasonable, as the revenue from the new tax revenue will have full affect. Consideration has been given, however, that the increases are not such that there would be a public outcry that the City is merely spending all of its new revenue on the police department. But the increases are enough to fairly compensate the members of this bargaining unit for the work that they perform.

It is important to restate that in addition to the wage increase recommended below, the Fact-finder is recommending that the wage increases in year two and in year three include an additional one percent increase as an offset for the recommended pension pick-up decrease of 1% in each of those years.

Findings and Recommendation

Therefore the Fact-finder recommends a 1.0% wage increase for the first year of the agreement.

Further, for the second year of the agreement the Fact-finder recommends a 2.0% wage increase plus an additional 1.0% increase to offset the reduction in pension pick-up in year two, for a total wage increase of 3.0%

Further, for the third year of the agreement the Fact-finder recommends a 2.5% wage increase plus an additional 1.0% increase to offset the additional reduction in pension pick-up in year three, for a total wage increase of 3.5%

Issue: Article 35 - Insurance

Positions of the Parties

The Employer proposed: (1) to raise the co-insurance contribution from 90%/10% to 80%/20%; (2) to align deductibles, office visit co-pays, out-of-pocket maximums, and wellness benefits with the majority of other City employees; and (3) to increase bargaining unit members' premium contribution from 9% to 11%.

The Union proposed to cap the amount of their monthly insurance premium at \$40 for single contributions and \$120 for family contributions.

Discussion

The Employer proposed a number of changes to shift costs to the members of the bargaining unit. It argued that increasing the co-pays and deductibles would encourage the bargaining unit members to be more judicious in their use of health care benefits, thus helping keep the costs down. Further, it argued that increasing the premium share to 11% during this agreement would encourage the bargaining unit members to keep usage down in order to keep the premium costs down.

The Union focused attention on the lack of caps on the premium cost, and the fact that in the most recently negotiated City/IAFF contract the caps that existed in that contract previously were not eliminated, demonstrating that the Employer could tolerate caps in this agreement as well. The Union argued that providing for caps in this agreement would restore the FOP's ability to negotiate "with certainty" the economic impact of health insurance for its members.

The health care premium costs for this bargaining unit are based solely on the health care costs for this bargaining unit. Both parties presented evidence that showed that the average health care cost per bargaining unit member in this unit is lower than any other collectively bargained City plan. Undoubtedly the reality is that that the present combination of co-pays, deductibles, premiums shares and the lack of caps has achieved a reasonable and fair result for health care costs in this agreement for the City.

It would be unfair to the bargaining unit members to recommend further increases in co-pays, deductibles or premium shares when they have already partnered with the City to achieve better cost efficiency than has been achieved with other bargaining units. This unit already leads the way, and it would be unfair to recommend further changes absent changes elsewhere, especially in light of the recently negotiated settlement with the IAFF.

Similarly, the Union's proposal for a dollar cap on premium share for the bargaining unit members is also unwarranted. Certainly the incentive for the bargaining unit members to keep health care costs down, in order to maintain or contain premium increases, has worked. There is little certainty in health care costs as one looks into the future, and the employees under the current language rightly bear some risk along with the Employer.

Findings and Recommendation

Upon review of the ample testimony and evidence presented on this issue, the Fact-finder fails to find a compelling reason to recommend any changes at all in this Article, regardless of which party proposed them. It appears to the Fact-finder that the current contract provisions are serving the parties well at this point, and should serve them well through the December 2011 expiration of this agreement.

If in negotiations for a successor agreement there has been movement in health care cost sharing with other bargaining units, or considerable changes in costs or circumstances, the parties can negotiate necessary changes at that point. However, in light of the apparent success of the current contract provisions and this bargaining unit in managing costs relative to costs for other City employees, no change in language is warranted.

Therefore, the Fact-finder recommends the retention of current contract language for Article 35.

The above represents in total the Fact-finder's findings and recommendations in this matter.



Martin R. Fitts
Fact-finder
December 2, 2009

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December 2, 2009

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Re: SERB #08-MED-08-0786
SERB #08-MED-08-0787
FOP, Capital City Lodge #9
-and-
City of Columbus
Fact-finding

Gentlemen:

With this letter I am sending to each of you via regular mail a hard copy of the Fact-finding Report that I issued today and transmitted to each of you via email.

A hard copy is also being sent via regular mail to SERB.

An invoice for my services will be sent under separate cover to each of you.

Sincerely,



Martin R. Fitts

Direct phone: 419-530-3542

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