

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

2010 MAR 15 A 11: 15

FACT-FINDING PROCEEDING

Case No. 08-MED-12-1396

Ohio Council 8, AFSCME, AFL-CIO and Local 2544, Employee Organization

and

University of Cincinnati, Employer

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

Daniel N. Kosanovich

ISSUED: March 12, 2010

Appearances:

**John Johnson, Staff Representative
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(For the Union)**

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(For the Employer)**

REPORT AND RECOMMENDATIONS

I. Background

The employer, in this case, is the University of Cincinnati which is a large, state university. The General Fund revenues annually exceed one (1) billion dollars and the University owns property valued (at replacement cost) at over two (2) billion dollars.

The bargaining unit consists of roughly five hundred employees. It is a mixed unit of technical and maintenance employees. The job classifications run the gamut between Groundskeeper through Blood Center Phlebotomist. The classifications included in the bargaining unit are:

- Assistant Air Quality Technician (General Maintenance)
- Air Quality Technician 1 (General Maintenance)
- Air Quality Technician 2 (General Maintenance)
- Assistant Air Quality Technician (Heat & Refrigeration)
- Air Quality Technician 1 (Heat & Refrigeration)
- Air Quality Technician 2 (Heat & Refrigeration)
- Auto Mechanic 1
- Auto Mechanic 2
- Automotive Service Worker
- Blood Center Phlebotomist
- Blood Center Technician
- Building Maintenance Supt. 1 (General Maintenance)
- Building Maintenance Supt. 1 (Air Quality)
- Building Maintenance Supt. 1 (Electrical)
- Emergency Building Maintenance Supt. 1
- Cashier 1
- Cashier 2
- Cashier Supervisor
- Custodial Work Supervisor
- Custodial Worker
- Delivery Worker 1
- Delivery Worker 2
- Assistant Electrician
- Electrician 1
- Electrician 2
- Equipment Operator 1
- Equipment Operator 2
- Event Technician 1

Event Technician 2
Groundskeeper 1
Groundskeeper 2
Groundskeeper 3
Head Start Tech 1
Head Start Tech 2
Irrigation Specialist 1
Irrigation Specialist 2
Laboratory Animal Technician 1
Laboratory Animal Technician 2
Laboratory Animal Technician 3
Laboratory Animal Technician 4
Labor Crew Leader
Laborer
Assistant Locksmith
Locksmith 1
Locksmith 2
Master Locksmith
Mail Processor
Mail Service Worker
Mail Clerk/Messenger
Maintenance Repair Worker 1
Maintenance Repair Worker 2
Maintenance Repair Worker 3
Messenger
Mobile Unit Assistant
Motorist Assistant Operator 1
Mover 1
Mover 2
Moving Supervisor
(Truck Driver LD/SA)
Parking Facility Attendant
Parking Maintenance Superintendent
Jr. Health Physics Tech 1
Jr. Health Physics Tech 2
Staff Health Physics Tech 1
Staff Health Physics Tech 2
Senior Health Physics Tech
Storekeeper 1
Storekeeper 2
Storekeeper 3
Stores/Transportation Worker
Teller
Vehicle Operator 1
Vehicle Operator 2
Machinist 1
Machinist 2

Morgue Supervisor (Embalmer)
Morgue Attendant
Nutrition Lab Assistant
Patient Care Service Associate
Phlebotomist
Sign Worker 1
Sign Worker 2
Sr. Physical Therapy Assistant
Stores Clerk

The record shows that the predecessor agreement became effective on February 12, 2006 and expired by its terms on February 11, 2009. Furthermore, the record indicates that the parties began negotiations for a successor agreement on March 24, 2009, using the interest-based bargaining approach, which was facilitated by SERB. The parties have been operating under an extension of the prior agreement to date. In the November 2009-December 2009 time frame, the parties reached a tentative agreement on all issues in bargaining. This tentative agreement was presented to the membership for ratification. Unfortunately, it was rejected by a margin of two to one.

The undersigned was appointed by SERB to serve as a Fact-finder in this dispute on October 30, 2009. The time to issue a report was extended by mutual agreement of the parties and a hearing was scheduled for March 2, 2010. The hearing was held at University Hall on the University of Cincinnati campus. This document reflects the Report and Recommendation of the Fact-finder.

II. Criteria

In compliance with Ohio Revised Code, Section 4117.14(G)(7), and the Ohio Administrative Code, Section 4117-95-05(J), the Fact-finder considered the following criteria in making the recommendations contained in this Report:

- 1) Past collectively bargained agreements between the parties;

2) Comparison of unresolved issues relative to the employees in the bargaining units with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and classifications involved;

3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;

4) The lawful authority of the public employer;

5) Stipulations of the parties; and,

6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III. Findings and Recommendations

Wages

AFSCME's Position With Regard to Wages

Perhaps the most effective presentation of the Union's position on wages is captured in the edited version of Article 21 set forth in the Union's pre-hearing statement. Therefore, the edited version of the wage provision of the preceding contract is set forth below in its entirety.¹

“ARTICLE 21 WAGES, CLASSIFICATION AND COMPENSATION

1. This Article on Wages, Classification and Compensation is the sole source of rights and obligations of the parties to this contract in these matters. Furthermore, the following language is intended to supersede all provisions applicable to public employees in the Ohio Revised Code and/or the Rules of the Ohio Department of Administrative Services relative to wages. Employees will be paid in accordance with the classification and pay plan set forth in this Agreement.

¹ Modifications of the 2006-2009 collective bargaining agreement language are presented in bold face, while deletions are lined through. Finally, editorial comments are included in italics.

2. It is the responsibility of the University to establish and maintain a system of classification specifications and concurrent wage and salary programs for the positions covered by this Agreement. Classification specifications will be prepared for each position covered by this Agreement, and these specifications will be maintained and updated as required by the University. Positions covered by this Agreement will be classified in specifications in accordance with normal accepted practices of job classification. Positions will be assigned to appropriate wage ranges in accordance with the position classification. All current authorized bargaining unit classifications are found in Appendix 1.

3. In the event the University changes the specifications of a classification or creates a new classification, it shall immediately notify the Union. If the Union believes that the specification changes merit a change in pay grade, or disagrees with the pay grade assigned to a new classification, it shall so notify the University, and the parties shall meet to negotiate the classification's placement in a pay grade. If the parties are unable to reach agreement, the matter may be arbitrated, pursuant to Grievance Procedures. The University shall not reduce a classification's pay grade without the Union's agreement. The University may establish new classifications whose duties, skills and qualifications are different from an existing classification.

4. In conducting a job classification review, a Position Description Questionnaire, (PDQ) is used to collect sufficient information about the position duties, responsibilities, and qualifications in order that an appropriate assignment of a classification and corresponding pay grade can be made by Human Resources. Under certain conditions, an on-site audit may be necessary.

5. Requests to reclassify a position should be based on a belief that duties, responsibilities, or qualifications of a position are such that it is inappropriately classified. No reclassification request will be reviewed within one year of the last review for the same position, except by mutual agreement of the University and the Union, unless the position's duties, responsibilities, or qualifications have changed. In addition, an employee who has changed positions may request a classification review if he/she believes that the now position's duties, responsibilities, or qualifications are such that it is inappropriately classified, provided he/she has completed his/her probationary period in the new position.

A. Reclassification requests shall be made as follows:

1. The requesting party should complete a PDQ and submit it to his/her supervisor, who will then submit the PDQ through supervisory channels to Human Resources. The supervisor shall ensure that the PDQ is submitted to Human Resources, with appropriate signatures, within thirty (30) days of its submission to the supervisor. Upon receipt of the PDQ, Human Resources, confirmation shall be sent to the employee which includes the date the PDQ was submitted to the supervisor and the date it was received by Human Resources.

2. Human Resources shall notify the employee's supervisor in writing of the classification and pay grade determination, including the reason for determination. A

copy shall be sent to the incumbent and the Union. Human Resources shall make every effort to respond within one hundred and twenty (120) days of the employee's submission of the PDQ to his/her supervisor.

3. If the incumbent disagrees with the determination of Human Resources, he/she may within fifteen (15) working days of the date of determination appeal to Step 2 of the Grievance Procedure.

6. If the incumbent's position is reclassified, the following salary adjustment shall be made:

A. If the position is reclassified to a higher pay grade, the incumbent's salary shall be increased by five percent (5%) or to the minimum of the new pay grade, whichever is greater. However, the salary shall not be increased beyond the maximum of the new pay grade.

B. If the position is reclassified to a classification within the same pay grade, no salary adjustment shall be made.

C. If the position is reclassified to a lower pay grade, the base rate of pay shall not be reduced unless it is over the maximum for the range, but any applicable longevity supplement shall be reduced appropriately.

D. The effective date of the reclassification and any accompanying salary adjustment shall be the beginning of the pay period following the earlier of either the date on which the completed PDQ, with proper signatures, was received by Human Resources, or thirty (30) days following receipt of the PDQ by the employee's supervisor.

7. If the reclassification recommendation of Human Resources would take an incumbent out of the bargaining unit, the employee may decline the reclassification and remain in the bargaining unit in his/her current classification.

8. Employees in an active pay status, and who have completed the probationary period as of February 12, ~~2009~~ 2006 shall receive a general salary increase of **four percent (4%)** ~~two percent (2%)~~ over the hourly base rate of pay. ~~Effective on the first day of the pay period which includes February 12, 2006, bargaining unit employees in an active pay status shall receive an increase of two percent (2%) over the hourly base rate of pay.~~

Effective on the first day of the pay period which includes February 12, ~~2010~~ 2007, bargaining unit employees in an active pay status shall receive an increase of **four percent (4%)** ~~one and one half percent (1.5%)~~ over the hourly base rate of pay. ~~Effective on the first day of the pay period which includes August 12, 2007, bargaining unit employees in an active pay status shall receive an increase of one and one half percent (1.5%) over the hourly base rate of pay.~~

Effective on the first day of the pay period which includes February 12, ~~2011~~ 2008, bargaining unit employees in an active pay status shall receive an increase of **four percent (4%)** ~~two percent (2%)~~ over the hourly base rate of pay. ~~Effective on the first day of the pay period which includes August 12, 2008, bargaining unit employees in an active pay status shall receive an increase of two and one half percent (2.5%) over the hourly base rate of pay.~~

9. Employees hired after separation will be considered as new employees for the purpose of determining pay. Employees reinstated to the same classification within one (1) year from separation shall receive the rate of pay which would have been received had the employee not separated from service. Employees who are returned to work after layoff of no more than one (1) year will be paid in accordance with Article 11. Employees reinstated within thirty (30) days of separation shall suffer no break in service.

10. When, because of physical or other disability, an employee is unable to perform the duties of this position, but is qualified for service in another classification, he/she may be reassigned to another classification at the same rate of pay if the new classification contains such a rate of pay; otherwise, at the next lower rate of pay than their current compensation. If an employee desires, he/she may continue to pay his/her retirement contribution on the basis of the higher previous salary and, upon retirement, receive credit for that salary if permitted by the appropriate retirement system

11. Beginning on the first day of the pay period within which the employee completes the prescribed probationary period in the individual's classification at the University, the employee shall receive an automatic increase to the post probationary rate of 5%.

12. Longevity Pay

A. Beginning on the first day of the pay period within which the employee completes five (5) years of total service with the State Government or any of its political subdivisions, each employee in positions paid under Appendix 2 shall receive an automatic salary adjustment equivalent to two and one-half percent (2½%) of the classification salary base, to the nearest whole cent. Each employee shall receive thereafter an annual adjustment equivalent to one-half (1/2) of one percent (1%) of his/her classification salary base, to the nearest whole cent, for each additional year of qualified employment until a maximum of ten percent (10%) of the employee's classification salary base is reached.

B. The granting of longevity adjustments shall not be affected by promotion, demotion, or other changes in classification held by the employee, nor by any change in pay range for his class.

C. Longevity pay adjustments shall become effective at the beginning of the pay period within which the employee completes the necessary length of service. Time spent on authorized leave of absence shall be counted for this purpose. Only employees hired prior to February 2, 1988 are eligible for longevity pay.

13. It is agreed that the wages, hours or working conditions as expressed in this agreement will not be reduced.

14. The University shall make all original appointments at the entry rate of the classification pay grade. If it becomes necessary to implement advance rate hiring, University Human Resources reserves the right to identify market sensitive classifications

which, if implemented, shall be adjusted for all bargaining unit members in the affected classification. Notwithstanding the foregoing language, unclassified employees can be hired at any rate higher than the starting rate in their classification based on prior experience in their field in which exceptional qualifications (scientific, professional or educational characteristics) are required, upon presentation of satisfactory evidence. Such advanced rate hiring will not affect the rates of incumbents in the classification.

15. In the event the University develops a job evaluation system, the University will meet with a committee of two (2) appointed by the Union to review the content procedures of the job evaluation system.

16. Qualified employees at Hoxworth Blood Center shall receive twenty-five dollars (\$25) per shift when required to speak or write a foreign language.

As demonstrated above, it is the Union's position that employees in active pay status, and who have completed the probationary period as of February 12, 2009, shall receive a general salary increase of 4% over the hourly base rate of pay. Likewise, effective the first pay period, which includes February 12, 2010, bargaining unit employees in active pay status, shall receive an increase of 4% over the hourly base rate of pay. Finally, effective the first day of the pay period which includes February 12, 2011, bargaining unit employees in an active pay status shall receive an increase of 4% over the hourly base rate of pay.

The Union argues that the evidence submitted during the fact-finding session supports its position. The University's operating revenues have doubled and enrollment growth is notably significant. In early May admissions were up 14.9%. In addition, the University has a certain level of flexibility with regard to endowments and grants. It certainly has the unencumbered reserves sufficient to warrant the conclusion that UC has the ability to finance the proposal.

A review of internal comparables also supports the Union's position in this matter. The Ohio Nurses Association contract with the University calls for a 2.5% increase in 2009 and a 3% increase in 2010. The Fraternal Order of Police contract calls for a 3%

increase in 2009 and a 3% increase in 2010. The Association of University Professors contract calls for a 2% increase in 2008-2009, a 3% increase across the board in 2009-2010, and a mid-year 2009-2010 1.5% increase. Finally, the SIEU contract calls for a 3% increase across the board in 2009, and a 3.5% increase in 2010.

In a memo to the UC community, Interim President Monica Rimai had this to say about commitments to wage increases already negotiated. "The commitment for bargaining groups that have already negotiated increases for 2009, 2010 and 2011, will be honored as obligations and considered as a base assumption when formulating the budget."

It is simply unfair to the AFSCME members to be denied the benefit of wage increases in 2009, 2010 and 2011, when other employees in bargaining units employed by the University realize such benefits.

In summary, the Union submits that each of the criteria considered by the Fact-finder will offer support to its position and requests that the Fact-finder adopt the Union's position of a 4% across the board wage increase for all employees of the bargaining unit in each one of three years of the contract. [The Union requests that the tentative agreements (save any agreement on wages, insurance benefit election, or duration) be incorporated into this Report as if fully rewritten herein.]

University's Position

It is the University's position with regard to the unresolved issue (wages) that in light of the financial constraints, the Union membership should accept a wage freeze with a reopener in June of 2010.

As noted above, the parties' previous agreement expired on February 11, 2009. However, the parties have been operating under an extension of the old agreement since

that time. The University has repeatedly expressed its view that it suffers from severe financial pressure to cut costs. Like many other public and private organizations, the University of Cincinnati is experiencing financial difficulties. The General Fund was cut by roughly \$23 million in fiscal year 2010. The University provided testimony from Jim Plummer, its Chief Financial Officer, that cuts for the fiscal 2011 (beginning July 1, 2010) are estimated at between 8% and 15%, or between \$23 million and \$38 million respectively.

Due to restrictions on funding sources, transferring money from one funding stream to another is generally not possible. The only true source to fund wages emanates from the General Fund.

The University has cited several reasons that the General Fund has decreased: the State reduced its contribution to the University; and in much of the fiscal year 2010 the revenues came from one-time federal stimulus money.

Finally, it must be noted that the University has adopted the position that no other bargaining unit negotiations will result in across the board increases. Therefore, the University asks that the Fact-finder adopt a recommendation put forth by the University.

RECOMMENDATION

In these strained economic times, parties to collective bargaining face unique and difficult challenges. It is not enough to simply address the present needs of the parties without regard to the long-term impact of making economic decisions. A delicate balance must be struck between all of the interests involved, while maintaining a clear focus on establishing a solid foundation that will yield both economic stability and security.

AFSCME argues in support of a 4% across the board increase in each year of a three-year agreement and relies upon a number of factors to bolster its contention. First of all,

the evidence submitted at the hearing suggests that the operating cash (unencumbered reserves) has grown the past two years and supports the University's ability to finance the Union's proposal. Furthermore, the University of Cincinnati enjoys the benefits of a rather large number of endowments and significant grant dollars. UC is also experiencing growth in the enrollment facet of the University. With a \$1 billion dollar budget, the Union argues that there is sufficient money to expend toward granting the employees in the bargaining unit wage increases across the board.

A cursory review of these factors would lend one to conclude that the Union's position is compelling. The University counters the Union's assertions. The institution's \$1 billion dollar budget was reduced in fiscal year 2010 by \$23 million dollars. It is the expectation of the University that in fiscal year 2011, the budget will be further reduced by an amount between \$23 and \$38 million dollars. Moreover, the General Fund revenues have decreased. The apparent flexibility to financially support the Union's proposal by transferring funds from endowments and/or grants is illusory. The endowments and grants come with designated usages and the vast majority of the money contained in those funds may not be used for wages and benefits of employees.

On balance the Employer's position appears to be the more compelling of the two proposals. This conclusion is supported by the fact that the parties in December of 2009 reached a Tentative Agreement on all provisions of the Collective Bargaining Agreement including wages. That position is identical to the position taken by the University in the fact-finding hearing. Adopting the University's proposal will lend some economic stability and security to the parties' relationship.

In adopting this posture, the undersigned is ever mindful that the employees in the bargaining unit are bearing an enormous burden. However, it serves a strategic

bargaining unit interest to accept a wage freeze in year one of the contract and introduce a wage reopener in year two of the contract. Hopefully, a clear economic picture (and a more positive one) will emerge during that time and allow the employees to realize some financial improvement. In an effort to lessen the impact of this recommendation, the undersigned suggests that the reopener for health insurance (Article 19) be delayed until August of 2010. Finally, in recognition of the employees' efforts here, it is recommended that each employee receive an additional vacation day, effective June 1, 2010.

In summary, it is recommended that the parties adhere to the wage freeze and reopener language concerning Article 21, which is reflected in the Tentative Agreement of the parties. A reopener in June of 2010 will afford the parties time to respond to the University's budget for fiscal year 2011. By June 2010, the parties should have a more clear understanding of the economic conditions.

It is recommended that the reopener for health insurance (Article 19) be delayed until August 2010 as noted above. That will provide the parties ample time to make changes to be effective January 1, 2011 and will hold the bargaining unit employees harmless from any premium or co-pay increases for the calendar year 2010.

In recognition of the employee's dedication to the University in spite of the economic conditions, it is recommended that each employee receive an additional vacation day effective June 1, 2010. An additional eight hours vacation time will be added to each employee's vacation bank. This is a one-time addition and will not affect accrual rates.

Finally, it is recommended that all Tentative Agreements reached between the parties prior to the fact-finding hearing be incorporated into this report as if fully rewritten herein.

IV. Certification

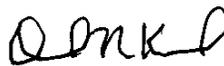
The fact-finding Report and Recommendations are based upon the evidence and testimony presented to me at a fact-finding hearing conducted on March 2, 2010. Recommendations contained herein are developed in conformity with the criteria for a fact-finding found in Ohio Revised Code 4717(7)(a-f) in the associated administrative rules developed by SERB. All Tentative Agreements reached by the parties prior to the fact-finding hearing on March 2, 2010 are incorporated herein by reference as if fully rewritten.



Daniel N. Kosanovich
Fact-finder

V. Proof of Service

This Fact-Finding Report was mailed on March 12, 2010 via the USPS to: William T. Johnson, Senior Director Labor & Employee Relations, 51 Goodman Drive, University Hall, Suite 360, PO Box 210160, Cincinnati, Ohio 45221-0166; John F. Johnson, Staff Representative, Ohio Council 8, AFSCME AFL-CIO, 1213 Tennessee Avenue, Cincinnati, Ohio 45229-1097; and J. Russell Keith, General Counsel, & Assistant Executive Director, SERB, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213. In addition, a copy of the Fact-Finding Report was sent via electronic mail on March 12, 2010 to William T. Johnson at william.johnson2@uc.edu, and John F. Johnson at jjohnson3135@gmail.com.



Daniel N. Kosanovich, Fact-finder