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IN THE MATTER OF IMPASSE X
X
BETWEEN X
X
THE CITY OF DAYTON, OHIO X
AND X
THE FRATERNAL ORDER OF POLICE X
CAPTAIN JOHN C. POST X
LODGE NO. 44 X

REPORT OF
THE FACT FINDER

SERB FILE NOS.: 2009-MED-01-0028 and 0029

HEARING: May 29, 2009; Dayton, Ohio

FACT FINDER: William C. Heekin

APPEARANCES

For the City

Donald L. Crain, Attorney

For the FOP

Susan D. Jansen, Attorney

ADMINISTRATION

By way of a letter dated April 7, 2009, from Donald L. Crain, the undersigned was informed of his designation to serve as fact finder regarding a contract reopener provision, negotiations impasse. On May 29, 2009, and following receipt of pre-hearing submissions, a fact finding hearing went forward where testimony as well as document evidence was presented. The record was closed at the conclusion of the hearing and the matter is now ready for the issuance of a fact finding report.

BACKGROUND

This matter concerns two City of Dayton, Ohio ("The City" or "Dayton") Police Department bargaining units, one made up of "All Sworn Police officers who are below the rank of Sergeant" as provided for in the relevant labor contract and is approximately 330 in number ("the Police Officers Unit"). The other unit is made up of all "sworn officers in the classified service above the rank of Police Officer" and includes approximately 55 sergeants as well as 13 lieutenants ("the Supervisors Unit"). Accordingly, these two bargaining units are represented in collective bargaining by Fraternal Order of Police Captain John C. Post Lodge No. 44 ("the FOP"). Thus, the City and the FOP are the parties in this dispute ("the Parties"), where each is signatory to the two instant collective bargaining agreements ("the Agreements" or "The Labor Contracts") currently in effect. It is to be noted that the Parties have had a collective bargaining relationship for many years.

The reopener provision that is the basis for this fact finding proceeding is contained in Article 16, "Wage Rates", Section 1, of the Agreements and states as follows:

* * *

Wage rates for employees shall be set forth in Addendum #1 attached to this Agreement.

<u>May 18, 2007</u>	<u>May 18, 2008</u>	<u>May 18, 2009</u>
3.0% increase	3.0% increase	3.0% increase

The City Manager, in his sole discretion, may opt to reopen this Contract on the issues of Base Wage Increase (Article 16, Section I) and Health Care Coverage (Article 18, Sections 1.A, 1.B and 1.C.) in lieu of the increases and coverages provided for in the third year of this Agreement. Such notice of reopener must be given by the City at least thirty (30) days prior to May 18, 2009. The reopening of the Agreement as set forth herein shall invoke the dispute settlement procedure set forth in O.R.C. Section 4117.14. The results of the negotiation process or any settlement reached between the parties or any determination ordered by a Conciliator will be effective May 18, 2009.

* * *

This reopener provision came out of the 2007 contract negotiations when the City was not agreeable to a wage increase of more than 2% regarding the 2009/2010, third year of the contract; mainly due to future uncertainty as to health insurance costs and City revenues. Accordingly, an Article 16, Section 1, provided for 3% wage increase as to 2009/2010 with the condition that the City Manager could unilaterally reopen the Agreements in 2009 on the issue of wages and health insurance was eventually agreed upon.

Two years later, in January of 2009, City Manager, Rashad M. Young, in having concluded that the City could not afford an employee base wage increase regarding the 2009/2010 period in question so informed each City employee union. This was subsequent to his "City Manager's 2009 Proposed Budget Overview Presentation" given to the Dayton City Commission on December 3, 2008, which included the following:

* * *

2009 General Fund Revenue Forecast
(in millions of current dollars)

Category	2007 Actuals	2008 Rev. Budget	'07-'08 % Chg	2009 Orig. Estimate	'08-'09 % Chg
Income Tax	\$112.76	\$108.30	-4.0%	\$105.42	-2.7%
Property Tax	11.31	11.14	-1.55	10.56	-5.2%
LGF	14.87	14.57	-2.0%	14.55	-0.1%
Investment	5.94	4.31	-27.4%	3.63	-15.7%
Fees/Charges	25.91	25.37	-2.1%	25.31	-0.3%
EMS/Vehicle	3.91	3.20	-19.3%	3.20	0.0%
Sub-Total	\$174.46	\$166.89	-4.5%	\$162.67	-2.5%
Revenue Solutions				4.68	
Total	\$174.46	\$166.89	-4.5%	\$162.67	0.3%
\$ Change	1.24	-7.88		0.47	

* * *

In doing so, he asked each to voluntarily agree to a wage freeze for 2009/2010. With no agreement, City Manager Young exercised his option to reopen contract negotiations with the FOP, the IAFF, and the service employees unit that is represented by the Dayton Public Service Union ("DPSU") - an affiliate of AFSCME Ohio Council 8. The IAFF and DPSU labor contracts contain the same reopener provision.

Several months later in early April of this year, 2009, the DPSU made a proposal to the City calling for a 2009/2010 base wage freeze and 4 furlough days without pay. In exchange, it asked for a commitment from the City to not lay off any DPSU represented employee for one year. In agreeing to the DPSU proposal, the City acted to increase its impact by implementing the same base wage freeze as to the non-union City employees. Thus, the City now seeks the same from the FOP, while also making clear that later in the year it plans to do likewise as to the

IAFF represented, firefighters unit. Shortly before the City and the DPSU reached this wage freeze agreement, according to the testimony of both City Manager Young and FOP president, Lieutenant Randy Beane, there were discussions between the two as to the City and the FOP possibly arriving at a joint settlement regarding the 2009/2010 base wage. With the announcement that the City had reached a 2009/2010 wage freeze settlement with the DPSU, these discussions did not continue.

As to the City's financial picture, dating back to the last economic recession in 2001 and arguably long before that, it has been far from positive. This has been largely due to the continuing loss of manufacturing jobs in the Dayton area, where manufacturing had been dominant. Thus, throughout most of the first decade of this century, the City has coped with the resulting loss in tax revenues by reducing services and eliminating approximately 508 positions. As to the Police Department, the record indicates that the number of full-time, sworn police officers has declined 70-84 in number going back to 2001. There are no current plans to have a recruitment class, nor to replace any Police Department vehicles. Additionally, the FOP points out that, for 2009, the City has budgeted 2 retirements from these Police Department bargaining units per month with an estimated total of 24 for the year. Nevertheless, also during this decade and up to the present where without dispute the City is nationally ranked towards the top in terms of violent crime, the crime rate - which undoubtedly is negatively impacted by the grim socioeconomic conditions outlined by the City in its presentation - has not declined.

Very importantly, the fact finding criteria as set forth in ORC 4117.14 is as follows:

* * *

- Past collectively bargained agreements between the parties;
- 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;

- 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,
- The lawful authority of the public employer.
- Any stipulations of the parties.
- 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.

* * *

Accordingly, the following are the positions taken by the Parties in this fact finding proceeding:

* * *

City position: 0% wage increase as to the 2009/2010 third year of the Agreements, as well as four unpaid furlough days.

FOP position: Maintain current contract language a 3% wage increase as to the 2009/2010, third year of the Agreements.

* * *

While the FOP acknowledges that the projected General Fund revenues will be less in 2009 than actual revenues in 2008, as well as going back to 2004; it contends that the 2009 City budget is in balance, including a 3% base wage increase for 2009/2010. It greatly emphasizes that a very large general fund, cash reserve balance has been part of the budget going back to the 1980's and 1990's when the City often argued a gloomy economic picture in fact finding, where the fact finders nevertheless recommended substantial base wage increases. While pointing out that it received a 3% increase in 2008, the FOP further supports its position by emphasizing the sacrifice these employees made during the 2007 negotiations regarding health insurance, which

saved the City several million dollars and was a key part of the quid pro quo regarding the instant 3% increase that is provided for in Article 16, Section 1, subject to a reopener. In contrast, while greatly stressing the unprecedented and epic nature of the current financial crises, as well as the DPSU wage freeze settlement; the City – while noting that since 1995 the FOP has received an approximate 55% wage increase, exceeding the CPI during this period, yet its revenues for the same period only increased by 4.9% – urges that a wage freeze is overwhelmingly justified in the face of a steep decline as to all of its revenue sources. In pointing out that it is back to the 1998 General Fund revenues level, the City contends the result is a projected 4 million dollar deficit for 2009, inclusive of the herein asked for wage freeze across the board as to all units. It emphasizes that this is mostly due to a completely unexpected sharp drop in income tax collections (its main revenue source) in 2009 as compared to 2008, where, alarmingly, an originally projected 2009 decline of 5.25 million dollars is now projected to exceed 11.13 million dollars.

FINDINGS AND RECOMMENDATIONS

At the outset, in making a recommendation a number of factors have to be considered. First, as was ably articulated at the hearing by the City's economist, Diane Shannon, with ample supporting documents, the undersigned can only find that the country, the State of Ohio, and the City of Dayton (as well as much of the world) is presently in the midst of an economic and financial crises of historic proportions. It began in earnest less than a year ago in the late summer and early fall of 2008 with a sudden and steep decline in world financial markets which was closely connected to a near collapse of the US banking system, a collapse that likely was halted only due to the massive intervention of the US government. Essentially, it seems that the view

of many if not most informed observers is that the US economy is presently in its worst crises since the 1930's. As to Ohio, where the state government is a City funding source and while not at the epicenter of the worst of the housing market collapse as compared to states such as California, Florida, Arizona, and Nevada; it has experienced a steep decline in home values along with a sharp rise in the rate of home foreclosures. This has led to a large drop off in City property tax revenues, another one of its funding sources. When you then add the severe decline in manufacturing where Ohio is a leading manufacturing state, the impact of all of this on the State, the City, as well as the surrounding region is very great.

As to Dayton, located in Southwestern Ohio with a population of approximately 155,461 in 2007 (down from 166,179 in 2000 and 262,352 in 1960), the economy has for many decades been dominated by manufacturing. While noting as just referred to that manufacturing and housing are two focal points of the financial crises, additionally there has been a near meltdown in the US auto manufacturing industry with overall car sales having dropped by more than 40% and 2 of the "big three" US auto manufacturers (Chrysler and GM) having recently filed for bankruptcy. While mentioning that auto manufacturing and GM in particular has been a mainstay of the Dayton economy, University of Cincinnati Professor of Economics, Sourushe Zandvaki - who was called as a witness by the FOP and who suggests that the economy may be bottoming while also describing what has recently occurred as a "tsunami" - offered a prediction that a turnabout may start in about *eighteen months*. While pointing out that this is well beyond the base wage period in question and as to another of Professor Zandvaki's observations (that Dayton needs to restructure its economy), this inherently involves a long term process in the context of a free market economy. Here, a goal of economic restructuring is thus not seen to be easily amenable to the efforts of a government actor such as the City to orchestrate, especially in

such a relatively short period of time. Therefore, the past ability of Dayton, where the unemployment rate is 12.3% versus the national rate of 8.9%, to rebound as argued by the FOP will almost certainly not be demonstrated during the relatively brief, 2009/2010 period in question. In other words, when a one year base wage rate is the only issue, it is the more immediate circumstances which are of primary concern.

Furthermore, as to the City's approximately 22 million dollar general fund, cash reserve which the FOP greatly points to, this is in the context of an approximately 160 million dollar annual budget, where it is understood that a cash reserve reasonably has to be maintained at a substantial level in order to meet unexpected contingencies. While this is important in normal circumstances, it would seem to take on special importance in the midst of an economic and financial crises, especially one of this magnitude which appeared almost "out of the blue" and continues to unfold. Moreover, there is little doubt that this traditionally large general fund, cash reserve balance has contributed to its Moody's A 1 bond rating, which allows the City to better access the credit markets at a lower interest rate: A distinct advantage in managing through an economic and financial crises, where one key concern is avoiding insolvency and the resulting loss of control over the budgetary process. Accordingly, against the backdrop of all the aforementioned, the strong emphasis of the FOP on earlier fact finding results going back to the 1980's - where it seems that the City at least in some cases may have overstated the precariousness of its financial position in light of its large cash reserve - is found to not be directly comparable.

Also, the one bright spot for both the City and the FOP is the fact that presently the Consumer Price Index ("CPI"), a well established key measure of the state of the economy regarding price inflation, is near or at 0% - a historically low rate of inflation. Thus, one

argument that is normally behind a request for a pay raise, keeping up with the cost of living, is virtually a non-issue in this matter. At the same time, a low rate of inflation is obviously a positive for the City as to its financial position. As to Dayton's expected share of the Federal economic stimulus package recently enacted by Congress, which in any event is understood to be an amount that is specifically targeted for certain areas, this is felt to be too uncertain a factor at this point in time to be of much use with respect to the resolution of the instant near term, 2009/2010 base wage dispute.

Additionally, it is very important to note that there is no evidence that the DPSU represented service employees bargaining unit has ever in the past set the pattern for collective bargaining and/or on the issue of wages regarding all City employees. Accordingly, while the 0% base wage settlement with the DPSU which the City greatly stresses is relevant since it involves the same employer and the same financial circumstances: the public safety work that is performed by the employees included in the two instant, Police Department bargaining units has to be viewed as substantially different. Moreover, while the aforementioned ORC 4117.14 fact finding criteria as to "comparable work" is understood to apply regarding both internal and external "comparable work": concerning the latter it is very important to point out that, despite the severity of the current financial crises, the record indicates that no large Ohio city comparable to Dayton - where most if not all are facing the same or similar economic and financial circumstances - is presently set to pay its sworn, police department employees a 0% increase in year 2009/2010. Additionally, and as the City acknowledges, since in 2007 it agreed to pay a 3% base wage increase to these employees in 2009-2010, subject to a reopener; the City has the burden of persuasion in this matter.

Against this backdrop, it is recommended that, effective May 18, 2009, and until the end of the contract term in 2010, there be a 1% increase in the base wage. In addition, it is not recommended that there be 4 unpaid furlough days. Essentially, this is felt to appropriately balance the labor relations history of the Parties, "comparable work" in both the internal and external sense, and "the ability of the public employer to finance" as is also set out in ORC 4117.14. More particularly, it is strongly felt that the latter, due to the current economic and financial crises and its impact on the City, has to be given the greatest weight and consideration. Nevertheless, while the City projects a 4 million dollar deficit for 2009 even with a wage freeze, the approximately 22 million dollar General Fund, cash reserve cannot be ignored. What also can't be ignored is that the instant dispute arises in the context of 2 *currently in effect labor contracts*, where a 3% increase as to the 2009/2010 third year was originally specified (subject to a reopener) and the City was able to implement, at least in part as a quid pro quo, a new health insurance plan involving a high employee deductible and, for 2009, an increase in the individual employee premium contribution. Without question, this has led to substantial cost savings for the City in the amount of several million dollars. Indeed the City Manager did not herein reopen on the issue of health insurance as was his option. In the end, this 1% (verses the 3% argued for by the FOP which was originally specified in Article 16, Section 1) base wage increase recommendation is felt to be in keeping with these police officers sharing in the unavoidable sacrifice that has to be made by all City employees as a result of the current financial and economic crises.



William C. Heekin
June 25, 2009
Cincinnati, Ohio