

2010 SEP 10 P 2: 22

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of:)	
)	
CITY OF ST MARYS,)	
Employer)	Date of Hearing:
)	July 28, 2010
-and-)	
)	
UTILITY WORKERS UNION OF)	
AMERICA, LOCAL 552)	
)	
)	
Case No. 2009-MED-09-0873)	
)	Date of Award:
)	September 7, 2010

FACT FINDER'S REPORT AND RECOMMENDATION

APPEARANCES

FOR THE EMPLOYER

Patrick Hire, Senior Consultant.
Clemans, Nelson & Associates, Inc.
417 North West Street
Lima, Ohio 45801-4237

FOR THE UNION

Marilyn L. Widman
Allotta, Farley & Widman Co., LPA
2222 Centennial Road
Toledo, Ohio,43617

FACT FINDER

Donald R. Burkholder, Ph.D.
University of Detroit Mercy
4001 W. McNichols
Detroit, MI 48221-3038

STATE EMPLOYMENT RELATIONS BOARD [SERB]-(Ohio)

SCOPE OF DUTIES OF THE FACT-FINDING PANEL in accord with
Section 4117 of the Administrative Code

- A. The fact-finding panel shall attempt to mediate the disputes of the parties prior to conducting a fact-finding hearing.
- B. When mediation efforts do not resolve all issues at impasse, the fact-finding panel shall hold an evidential hearing except that the parties may stipulate facts and waive a hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the Board to issue subpoenae to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Fact-finding hearings are to be held in private.
- C. The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.
- D. The fact-finding panel, in making recommendations, shall take into consideration the following:
 - (1) Past collectively bargained agreements, if any, between the parties.
 - (2) Comparison of unresolved issues relative to the employees in the bargaining unit with the 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.

A fact-finding hearing was held on July 28, 2010 to examine the remaining unresolved issues, which will be dealt with in this Fact-Finder's report and recommendations. The issues are as follows:

1. Elimination of some job classifications.
2. Creation of a second tier for remaining classifications, as reflected in Appendix B at Section B-1 and what would be a new Section B-3.
3. Implementation of a one percent(1%) increase for 2010.

These Employer proposals are dealt with in Appendixes A, B1 and B3.

The parties met for collective bargaining on six occasions: November 12, December 3 and 2009, and January 26, March 2, and May 25, 2010. All tentative agreements reached during negotiations are hereby incorporated into this report and recommendation.

The UWUA bargaining unit, certified in 1984, includes all permanent and permanent, part-time clerical, technical, service, and maintenance. It excludes employees of the Police and Fire Departments, all confidential, management level, professional employees, and all supervisors as defined by the Act (O.R.C. 4117) as well as all other persons employed by or under the authority of the Employer. The Employer specifies the function of the employees in the unit as follows:

Collection, sorting, transporting, disposal, and/or shipping of municipal solid waste and recyclable materials; operation and maintenance of the City's water treatment plant and wastewater treatment plant; operation, maintenance,

and repair of the City's wastewater collection system, and water distribution system; electrical distribution system including light substations, City streetlights, and traffic signals; maintenance and repair of all City streets, alleys, and parking lots; engineering field work and design of all capital improvements for the various departments of the City. The engineering staff also provides construction inspection services on all capital improvement projects undertaken on behalf of the City by contractors, such as street improvements, sanitary sewers, water lines, sidewalks, etc. Utility clerks and meter readers provide all necessary labor and expertise to prepare monthly utility bills that cover water, sanitary sewer, storm sewer, electric, and refuse use fees.

Examination of the history of negotiations indicates an overall bargaining unit refusal, or at least reluctance, to participate in an Employer initiative to form a committee of stakeholders to discuss and consider various approaches to increasing health costs. Employer asserts that the UWUA has sought improved pay and benefits equal to those achieved by other bargaining units, the public safety units in particular, and has been unwilling to engage in the requisite give-and-take of the negotiating process. At least some of that difficulty appears attributable to several changes over time in the composition of the bargaining committee, along with the impact of layoffs due to the shutdown of the municipal power plant, and the variety of occupational specialties inherent in such a bargaining unit.

During the course of negotiations, zipper clause language was dropped from Article 2, Duration, which would have made it extremely problematic to discuss issues even at the informal level, e.g., the Employer initiative for all stakeholders to participate in an ongoing committee whose purpose is to consider the rapidly escalating cost of health insurance premiums, a matter of significant mutual concern. The Employer gained the right to self-insure, as it attempts to bring all bargaining units into the same pool health insurance pool, thereby slowing the steady increase in the cost of premiums. Even so, coverage maximums have been increased. The Employer has agreed to continue its “Section 125” provision for employees’ contributions to health insurance premiums and in addition establish a program for contributions to a Health Savings Account (HSA). The establishment of this combination of tax-reducing programs provides a potential for considerable reduction in employee health costs.

Review of available data on the City’s budget report provides an overall general perspective of its financial health..The Government Finance Officers Association (GFOA) suggests a measure, to be applied very generally and in view of the governmental unit’s circumstances: a ten percent (10%) unreserved fund balance. This Fact-Finder’s review of City of St. Marys Statement of Revenues Expenditures and Changes in Fund Balances, Governmental Funds for the Year Ended December 31, 2008 indicated a fund balance of approximately thirteen

percent (13%). The 2008 budget data was the only, the most recent and reliable data from which a realistic estimate could be derived.

The Employer's arguments are based primarily on two (2) themes:

- 1) reorganization of the City for the efficient use of taxpayer money, and
- 2)) pattern bargaining. Over the past decade the City has taken consistent steps to reorganize the City due to spiraling expenses and the current economic situation in t he country. This process has included management, non-bargaining unit, and bargaining unit employees. Any reorganization that has involved bargaining unit employees has been accomplished in such a manner as to absorb employees subject to any abolishment and, therefore, moved into other jobs.

The Employer has managed its resources carefully and prudently, with special reference to the shutdown of the municipal power plant and the care taken to provide continued employment for those who were displaced, minimizing harm to the greatest extent possible. Significant problems faced by the City in addition to, and attributable to, the weak economy nationally were the steady loss of the tax base due to falling property values generally; loss of several manufacturing facilities and other businesses; reduced traveler- visitor- generated revenue; loss of or reduction of state revenue sharing; along with an obsolescent and costly municipal electric power plant.

The Employer position on reduction in position classifications is recommended. As the City notes, it provided for many levels with in the same

position structure, i.e., multiple levels of clerks, laborers, etc., a costly,,
cumbersome system to manage and, significantly, a likely source of employee
dissatisfaction, damaging to morale and therefore damaging to productivity. The
establishment of a second tier of wages for employees hired after January 1,2010
is justified by the SERB Fact Finding guidelines and comparative wage analyses,
and is recommended. Similarly, the Union position on the 2010 one percent wage
increase, i.e., that the increase be effective at the beginning of the agreement,
January 1, 2010, should be adopted, based on the City's ability to pay as well as,
and importantly, the perception of some employees that they were being
punished for their actions during bargaining.

Hopefully, these recommendations will serve as the bases for further
discussions leading to settlement, and to a long term day-to-day relationship
which engenders trust and cooperation. The parties were well and professionally
represented, a circumstance greatly appreciated.



Donald R. Burkholder

Sept. 7, 2010

This certifies that this report and recommendation was faxed or e-mailed to the
parties and to SERB today, Tuesday, September 7, 2010.

