STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of the Fact Finding between

CITY OF WADSWORTH	)	**CASE NO. 09 – MED – 12 - 1482**
	)	
AND	)	
	)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (IBEW) LOCAL UNION 306, AFL-CIO	)	**FINDINGS AND RECOMMENDATIONS**

MELVIN E. FEINBERG, FACT FINDER

APPEARANCES

FOR THE EMPLOYER:

Benjamin S. Albrecht	Attorney at Law, Downes Fishel Hass Kim LLP
James L. Kovacs	Human Resources Manager, City of Wadsworth

FOR THE UNION:

Steven Stock	Union Organizer, IBEW Local Union 306
Mark W. Douglas, Sr.	Business Manager/Financial Secretary IBEW, Local Union 306

SUBMISSION

This matter concerns the fact-finding proceeding between The City of Wadsworth and International Brotherhood of Electrical Workers (IBEW) Local Union 306, AFL-CIO, herein also collectively known as the Parties. The State Employment Relations Board, in accordance with the Ohio Revised Code §4117.14(C)(3), duly appointed the undersigned as Fact Finder in this matter by letter dated December 23, 2009.[1]

Pursuant to the mutual agreement of the Parties regarding time extensions in this matter, the Parties went to fact finding on January 15 and February 2, 2010. Prior to the hearing, in accordance with SERB rules, the Parties filed complete position statements with the Fact Finder. The proceedings were conducted in accordance with the rules and regulations of SERB.

BACKGROUND

The Employer recognizes the Union, pursuant to SERB certification, as the exclusive bargaining representative of approximately nineteen (19) of its full-time and part-time employees working in its Municipal Electric Power Supply and Distribution Department in the following unit:

Power Line Crew Leader, Power Line Electrician 1, Power Line Electrician 2, Power Line Electrician Trainee, Power Line Trainee, Electric Meter Technician 1, Electric Meter Technician 2, Electric Meter Technician Trainee, Customer Service Engineering Technician 1, Customer Service Engineering Technician 2, Customer Service Engineering Technician Trainee, Operations Setup/SCADA Technician, Operations Setup Technician, General Maintenance and Warehouse.

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[1] Terms used in this Fact Finder's Report are also as follows:

a) The City of Wadsworth is also referred to as the Employer, the City, or Wadsworth;
b) International Brotherhood of Electrical Workers (IBEW) Local Union 306 is also referred to as IBEW or the Union;
c) State Employment Relations Board of Ohio is also referred to as SERB;
d) Ohio Revised Code is also referred to as ORC.

The Parties engaged in extensive and productive negotiations prior to the first day of fact finding, during the interim period between the two dates of fact finding and at the fact-finding sessions. After these extensive negotiations and with mediation by the Fact Finder, tentative agreement was reached by the Parties regarding substantial portions of the proposed Collective Bargaining Agreement including the following:

Article I –	Purpose and Intent
Article II –	Recognition
Article III –	Management Rights
Article IV –	Labor /Management Committee
Article V –	Visitation of Union Officials
Article VI –	Subcontracting
Article VII –	No Strike/No Lockout
Article VIII –	Union Security
Article IX –	Policy/Work Rule Changes
Article X –	Hours of Work and Overtime, (Only Sections 4, 5, 6, 7, 8, 10, 11, 12, 13, 14)
Article XI –	Wages (The language of Sections 3 & 4 only)
Article XII –	Compensatory Time
Article XIII –	Sick Pay
Article XIV –	Vacation
Article XV –	Holidays
Article XVII –	Pay for Meetings
Article XVIII –	Compensation for Attendance at School
Article XIX –	Leaves of Absence including Bereavement
Article XX –	Personal Leave
Article XXI –	Donated Leave
Article XXII –	Health and Life Insurance (Section 2 Life Insurance only and not Section 1Health Insurance)
Article XXIII –	Health and Safety of Employees
Article XXIV –	Uniforms and Equipment
Article XXV –	Inclement Weather
Article XXVI –	Commercial Drivers License and Insurability
Article XXVII –	Layoffs and Recall
Article XXVIII –	Promotions, Transfers and Demotions
Article XXIX –	Vacancies and Job Postings
Article XXX –	Seniority
Article XXXI –	Disciplinary Action
Article XXXII –	Grievance Procedure
Article XXXIII –	Arbitration
Article XXXIV –	Employee Records
Article XXXV –	Administrative Leave
Article XXXVI –	Bulletin Boards
Article XXXVII –	Gender & Plural
Article XXXVIII–	Headings
Article XXXIX–	Conformity to Law

CRITERIA

The Fact Finder, in making his findings and recommendations, has been guided by the Parties' oral and written presentations on the issues, by the testimonial and documentary evidence presented during the proceedings, by the record as a whole, by the various Ohio Revised Code provisions, including ORC §4117.14(C)(4)(e) and (G)(6)(7)(a)-(f) and Ohio Administrative Code §4117.9-05(J)(K) and has given consideration to the following criteria:

(1) Past collective bargaining agreements, if any, between the parties;
(2) 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;
(3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues involved, 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;
(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ISSUES

The only contractual issues which the Parties could not resolve are the following:

1. Article X – Hours of Work and Overtime: Section 1. Work Day; Section 2. Work Week; Section 3. Pay Day – Pay Period; and Section 9. Call-in Pay;

2. Article XI – Wages: Section 1. Wages; Section 2. Merit Increases;

3. Article XVI – Longevity Pay;

4. Article XXII – Health Insurance, Section 1. Health Insurance;

5. Article XXXX – The Duration of the Agreement, Subsequent Negotiations, Entire Agreement, Section 1. Duration; Section 2. Subsequent Negotiations; and Section 4. Entire Agreement. (This Article contains no Section 3.)

1. Article X: Hours of Work and Overtime, Sections 1, 2, 3, and 9

The Employer's Position:

Section. 1 and Section 2. The Employer wishes to entirely delete language in Sections 1 and 2 of the current Contract which defines "work day" and "work week" and wishes to replace it with more general language. It proposes to modify current language to indicate that the work week will consist of forty (40) hours, typically being Monday

through Friday from 7:00 a.m. to 3:30 p.m. The Employer maintains that this modification will give it "flexibility" in the future should budgetary concerns or workflow require that the "work day and/or work week" need modification.

The Employer proposes giving bargaining unit employees four (4) weeks advance notice before instituting any schedule change. Moreover, it proposes language that requires it to discuss with the Union the effects of such schedule changes for employees several weeks prior to implementing such changes.

The Employer was able to cite only to Oberlin and Cuyahoga Falls as examples of similar sized cities having no defined work day language applicable to their employees. Seven other similarly sized cities it investigated had a defined work day. It was not able to cite any examples of similar sized cities which had no defined work week. All cities which it investigated had defined workweeks applicable to their employees.

Section 3. The Employer desires that the following language be deleted from Section 3: "The pay day will be on the Friday following the end of the pay-period." It does not oppose the retention of the other language in Section 3 of the current Contract.

The Employer maintains it still intends to pay its employees on a biweekly basis, but because of the current language of the Contract, which the Employer wishes to delete, its payroll employees "are burdened in trying to complete payroll within six (6) calendar days following the conclusion of the pay period." The Employer asserts that this current Contract language requires its payroll employees to complete their tasks too hastily, which sometimes results in the making of unnecessary errors. It believes that changing the language of Section 3 will allow both in its payroll employees and bargaining unit

employees to more carefully review payroll documents and will ensure greater payroll accuracy.

The Employer asserts that of its six (6) represented bargaining units, only the IBEW bargaining unit's Contract contains a provision which mandates when pay day will occur. The Employer could not locate any comparable contracts containing "such restrictive language regarding the pay date." Moreover, if the Employer's pay day proposal is recommended by the Fact Finder, it has a plan to provide for a seamless transition.

The Employer notes that comparable Ohio cities to Wadsworth – such as Bowling Green, Bryan, Cuyahoga Falls, Hamilton, Hudson, Lebanon, Oberlin, and Painesville – have no defined pay day.

Section 9. The Employer proposes to leave the language in the first paragraph, the tables, and the third paragraph of Section 9 as they now appear in the current Contract. It, however, proposes that the second paragraph of this Section be modified to read as follows (see the bolded wording for the Employer's suggested change):

> "Employees who are not scheduled to be on standby, but report for duty on a call-out shall be paid at the rate of three and one half (3 1/2) hours for the first hour of work and one and one- half (1 ½) times his/her normal hourly rate for time worked beyond the first hour. Any bargaining unit employee **who actually works** on an unscheduled basis between the hours of 12:00 A.M. and 4:30 A.M. shall be entitled to two (2) hours of pay at his/her normal hourly rate in addition to any stand-by or call-in pay as outlined above."

The Employer argues that the Union's position on Section 9 leads to an unwarranted expansion of Call-in Pay compensation.

The Union's Position

Section 1., Section 2., and Section 3. The Union wishes to maintain the current language of the Contract with respect to Section 1, Section 2, and Section 3. The Union asserts that the majority of examples cited by the Employer in support of its proposals concerning these Sections, in fact, support the Union's contentions. Those cities have for the most part maintained definite, not flexible, language describing their employees' work days, work weeks, and pay days – pay periods.

Moreover, the Union contends that, regarding the pay day–pay period issue, the Employer instituted an electronic payroll system during the life of the Contract which was designed to improve both the speed and accuracy of the payroll delivery.

Section 9. The Union proposes that the second paragraph of this section be replaced by the following two paragraphs (see the bolded words for the Union's suggested changes):

> "Employees who are not scheduled to be on standby, but report for duty on a call-out shall be paid at the rate of three and one- half (3 ½) hours for the first hour of work and one and one-half (1 1/2) times his/her normal hourly rate for time worked beyond the first hour.
>
> **Any bargaining unit employee [who] works on an unscheduled basis between the hours of 11:00 p.m. and 5:30 a.m. shall be entitled to two (2) hours of pay at his/her normal hourly rate in addition to any stand-by or call-in pay as outlined above.**"

The Union argues that its above proposed language for Section 9 will result in more equitable compensation for employees for it is more in line with their "normal sleep time."

Findings and Recommendations

Article X, Sections 1 and 2. I have considered the Employer's proposed new contract language regarding Article X, Sections 1 and 2 which would, as it asserts, give it flexibility in establishing the bargaining unit's work day and work week. It proposes language which, if adopted, would grant it ultimate authority to unilaterally establish unit employees' daily and weekly schedules.

I was not presented with sufficient evidence to convince me that the Employer currently requires this authority to efficiently manage this particular unit of employees. There was insufficient indication of employee scheduling problems which would warrant that such a broad authority be lodged in the Employer. There was not enough data presented to demonstrate that employees have worked substantially increased amounts of paid overtime of all types over the life of the Contract or that the Employer suffered such financial distress as a result so as to justify its proposed Contract language in this area. I am not persuaded by its evidence regarding comparability or the need for consistency among its units.

Article X, Section 3. I note with respect to Article X, Section 3 that the Employer has, in adopting an electronic payroll system, certainly improved its timeliness and accuracy in processing its payroll. The fact that other of the Employer's units or other units of other cities may not have specific contractual language mandating a specific pay day – pay period does not, without more, convince me that the Article X, Section 3 Contract language should change. The Employer appears to have been successful in meeting its payroll obligations to unit employees over the term of the Contract. A

contractually mandated pay delivery formula, such as the one which exists here, is usually preferable to one that is based on good faith alone.

In summary, the existing language of the Contract regarding a defined work day, work week, and pay day – pay period provides guarantees to unit employees which safeguard their schedules and their receipt of pay and makes their lives and the lives of their families more predictable. I have not seen compelling financial data or language in other contracts which leads me to a contrary conclusion.

Consequently, for the above stated reasons, I believe the Union's position regarding the Article X, Sections 1, 2, and 3 to have greater merit.

Article X, Section 9. The Employer asserts that the new language it proposes for Article X, Section 9 seeks to clarify the circumstances under which unit employees may be entitled to Call-in Pay. The Union's proposed new language for Section 9 seeks to expand the time under which Call-in Pay may be claimed.

I conclude that the Employer's proposal regarding Section 9 is lacking in merit. The meaning of the contractual language that the Employer wishes to replace seems apparent. I am not aware of any circumstances demonstrating that the current language is somehow unclear or unwarranted.

I also conclude with respect to Section 9 that there are not sufficient reasons advanced by the Union to support its position regarding its proposal to expand the time frame for claiming call-in pay. Increasing the Employer's expenses in this area is not presently justified.

I recommend that the current language in the Contract regarding Article X, Sections 1, 2, 3, and 9 be retained as they currently exist.

2. Article XI – Wages, Sections 1 and 2:

The Employer's Position

Section 1. The Employer proposes a 0%-1%-2% wage increase for the three (3) year life of the Parties' new collective bargaining agreement. It also submits that the new wage rates should not be made retroactive, but instead should commence with the date the Parties execute the Contract.

The Employer claims its wage proposal of 0% in the first year of the Contract meets internal comparables with certain of its other units. The Employer and the OPBA recently negotiated contracts for the three (3) units, Sergeants, Patrol Officers and Dispatchers respectively, which gave those employees no wage increase in the first year of their agreements. The non-bargaining unit employees of the Employer are receiving no pay increases in 2010. The Mayor, Law Director and City Auditor of Wadsworth are forgoing their 2010 wage increases.[2]

Based upon current projections with respect to the cash flow and current electricity rate levels, operating income for the electric utility is projected to decrease until 2014, when it is forecast to begin operating at a deficit level. Due to power costs and increased private competition, the Employer asserts its wage proposal is appropriate.

The Employer placed into evidence a document dated December 3, 2009, prepared for it by an independent financial analyst, which presented the long term

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[2] The salary schedules for the Employer's other represented units reveal the rate of wage increases to be as follows:

AFSCME	2010		3%
IAFF	2010		3.25%
	2011		3.5%
OPBA Dispatchers/ Patrol Officers	2010		0%
(2 Contract Units)	2011	(1/1)	2%
		(7/1)	1%
	2012		3%

economic projections for the Employer's electric utility for the years 2010 through 2014. The document proposed certain financial targets and made projections and recommendations. It also set forth the goal of establishing a minimum cash reserve policy to meet, among other things, possibly large unexpected expenditures and recommended certain electric utility rate increases in the years 2010, 2011 and 2012 to maintain the financial health of the utility. The Employer, in accordance with the analyst's recommendations, established a cash reserve policy.

The Employer notes that during the life of the current Contract, some businesses have left Wadsworth and the sale of electric power declined. The annual average wholesale cost of power to the Employer has significantly risen. The Employer had contracted for fuel and electricity at higher wholesale prices predicated upon its assumption that in the future those prices would be even higher. The retail electricity rates of its competitors decreased and have continued to decrease in 2010. The Employer has had to compete with those rates or risk losing customers. These factors are all influencing the decline of operating income for the Employer's electric utility.

The Employer maintains that as of February 2, 2010, unit employees are generally paid above average salaries when compared to those in similar bargaining units in all but three (3) comparable cities.[3]

All bargaining unit employees in this case received a 4.25% wage increase in each year of the current three-year Contract. This exceeded the SERB documented average wage settlements for Ohio state, county, and local employees in all regions of Ohio

[3] Its summary analysis was based on employee units in Lebanon, Hamilton, Bryan, Galion, Oberlin, Painesville, Bowling Green, Cuyahoga Falls, Niles, and Hudson, Ohio.

during 2007 and 2008 by approximately 1.25 %. The Employer maintains that the wage increases were not justified by the consumer price index data for those years.

The Employer also contends that in June 2009, the First Energy Corp., its largest competitor for the sale of electricity, secured contract extensions from seven (7) of its represented units of power plants and other electric employees.

Section 2. The Employer proposes deleting Section 2 as it recommends the elimination of the 1% merit wage increase included within the current Contract. According to the Employer, it no longer serves as a "merit" increase, but has been perceived as "... an additional 1% wage increase all employees have received." In view of the current economy and budgetary projections it submits that merit increases are no longer justified. It notes that the Union's wage proposal is actually 4.5%-4.75%-5%, when one takes into consideration the continuation of a 1 % merit increase, and it is well beyond statewide averages.

The wage rate the Employer proposes for the next three (3) years of a new collective bargaining agreement would be reflected in the new wage tables, appearing in Section 1 and after the Employer's newly renumbered Section 3 of this Article.[4]

The Union's Position

Section 1. The Union proposes this Section change to reflect that all bargaining unit employees receive wage increases in 2010 of 3.5%, in 2011 of 3.75%, and in 2012 of 4%, respectively. It also proposes that the effective date of the wages be made retroactive to February 1, 2010.

[4] The Employer wishes to eliminate Section 2 and renumber the remaining Sections of Article XI – Wages. The current Section 3 would become Section 2; the current Section 4 would become Section 3.

Section 2. The Union proposes to maintain the language of the current Contract for this Section.

The Union proposes a table of classifications of bargaining unit employees that would appear after Section 4 and that contains the minimum rate of pay for new hires reflecting its requested 2010, 2011, 2012 wage increases.

The Union, in support of its wage proposal, notes that the Employer has had an increase in its customers for electricity, as is evidenced by the Employer's own summaries which show a steady rise in the total number of electric meters installed by it from 1956 through 2009.

Furthermore, the Union asserts that six (6) employees left the bargaining unit since the ratification of the Contract, and only one (1) additional employee was hired over the three-year life of the Contract. As a result, the total unit payroll has decreased by $283,504. The Union maintains that, if its salary proposals were adopted, the entire three-year wage increase for the unit would only cost the Employer a total of $112,213.78.

The Union notes that the pay increases scheduled for employees occupying similar positions as unit employees in this case in comparably sized cities indicates that those employees are all due greater increases in the future than those offered to unit employees by Wadsworth.[5]

[5] Oberlin/IBEW: January 1, 2010 – 3.5%; Hudson/Utility Workers: January 1, 2010 – 3%; January 1, 2011 – 3.25%; Galion/AFSCME: January 1, 2010 – 3%; Hamilton/IBEW: October 23, 2010 – 3%; Cuyahoga Falls/Utility Workers: January 1, 2010 – 2.25%; Painesville/IBEW: April 1, 2010 – 3%; Wadsworth/IAFF (firefighter/paramedics): January 2010 – 3.25%; January 2011 – 3.5%

Findings and Recommendations

Article XI – Wages, Sections 1 and 2. In considering Article XI – Wages, Sections 1 and 2, I note that the Employer compensates the employees in this unit solely from revenues it receives from operating its electric utility. It does not rely upon general fund monies to subsidize its contract obligations to this bargaining unit. While the amount of revenues from the sale of electricity has declined over the life of the current Contract, the Employer is still realizing substantial revenues from its electric utility operations. There are many reasons for the decline in usage of electricity including the poor state of the Nation's and of Ohio's economy. This probably has negatively affected the sale and usage of electricity. Significant competition from the Employer's larger private competitor, the unpredictable price of commodities needed to generate electricity, the wholesale price of purchasing electric power, and the current declining price in the retail electrical market have all, perhaps, also contributed to current deteriorating revenues and may continue to do so in the future.

However, the Employer is not claiming an inability to pay in this case.[6] It appears to want to exercise significant restraint in granting wage and benefit increases to unit employees, and it wishes to preserve economic resources as a "cash reserve" for potential future needs. Naturally, best financial practices dictate that such future expenditures must be anticipated. While it may experience such pressing needs at some point, none have been clearly identified as being immediate for the purposes of this case.

Furthermore, as was noted previously, since expenditures for unit employee wages and benefits do not depend on general fund considerations which influence the

[6] The Employer's financial analyst's report in evidence reveals that it was prepared without the benefit of an audit of the Employer's expenses and was based upon assumptions which were not evaluated for their accuracy or reliability.

structuring of wages for non-unit employees, those considerations do not necessarily strongly influence the Fact Finder's recommendation. Additionally, there is no evidence that the Employer's various bargaining unit representatives of different unions acted in concert when bargaining with the Employer or that those unions agreed to be concertedly bound to any negotiating proposals.

A review of the comparability evidence cited by the Union reveals that all bargaining units within those examples have or will receive greater percentage wage increases in 2010 and 2011 than those the Employer has offered during negotiations.

Employees in the Employer's other represented bargaining units, with the exception of those in the OPBA, are receiving wage increases in 2010. All of those employees, with the exception of those in the AFSCME unit whose contract ends in December 2010, are scheduled for greater raises in the future than those being offered to the IBEW unit. Moreover, all of the Employer's units may be receiving other forms of compensation or other contractual considerations not available to the employees in the IBEW unit. Accordingly, it is difficult to justify treating the Employer's different units in the same manner with respect to wages.

After considering those comparables, the current wage structure of the Employer's other represented bargaining units, all of the data in evidence, and the record as a whole, I believe a compromise between the Employer's position and the Union's position is justified.

Neither the Employer nor the Union presented any particular evidence with respect to the retroactivity issue. I note that both Parties raised the issue of retroactivity concerning wages during the fact-finding hearing in discussions over Article XXXX.

Nevertheless, addressing the matter in a discussion of wages is appropriate. Usually, retroactivity is granted as to wages, unless the Union has caused unnecessary delay in the collective bargaining process. There is no indication that either of the Parties delayed the bargaining process. Under these circumstances, the granting of retroactivity as to wages back to February 1, 2010, appears to be warranted.

Therefore, I recommend retroactive wage increases, as reflected in the following language, to replace that presently contained in Article XI, Section 1 – Wages:

Section 1 – Wages: All bargaining unit employees will receive the pay increases appearing opposite the years 2010, 2011, and 2012 respectively, as are set forth below. They will become retroactively effective on the specific dates set forth below in those years (the wage rate increase for 2010 will be paid retroactively to February 1, 2010):

Year	Per Cent of Increase	Effective Date of Wage Increase
2010	2%	February 1, 2010
2011	3%	February 1, 2011
2012	3%	February 1, 2012

Section 2 – Merit Increases. Merit pay increases of 1% were required by the Contract to be paid yearly to all bargaining unit employees who receive a satisfactory annual work evaluation. I am not unmindful of the fact that merit pay increases contribute to unit employees' total compensation. However, presumably, merit pay was meant to encourage the employees to strive to perform in a satisfactory manner so as to deserve being rewarded for their efforts. The merit pay concept, as it is currently administered, constitutes a positive motivating force, and I have seen no sufficient reason advanced to warrant its discontinuation. Therefore, I adopt the Union's position on the

matter. **I recommend that the language of Article XI, Section 2 – Merit Increases remain unchanged.**[7]

I also recommend that a new TABLE OF CLASSIFICATIONS of bargaining unit employees, modeled after the one in the current Contract (at page 14) but which contains the newly recommended "Minimum Rates of Pay for New Hires" for the years 2010, 2011, and 2012, appears after Article XI, Section 4 of the new Contract.

3. Article XVI – Longevity:

The Employer's Position

The Employer proposes maintaining current language of the Contract with respect to longevity pay. Bargaining unit employees in this unit, on an hourly basis, receive the same longevity compensation as other of the Employer's bargaining and non-bargaining unit employees receiving such pay. All of the Employer's full-time employees receive a longevity supplement equivalent to $.02/hr. According to the Employer, keeping longevity pay language at its current formula permits it to maintain internal consistency. The Union's proposal to increase longevity pay 28.57% is irresponsible in today's economic climate.

The Employer contends that Wadsworth is in the top half of the following comparable cities compensating employees with longevity pay.[8]

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[7] Inasmuch as I did not adopt the Employer's suggestion to eliminate paragraph 2, **I recommend that paragraphs 3 and 4 remain numbered as they are and that their current language remain as it is in the current Contract.**

[8] It cites to Bowling Green, Bryan, Cuyahoga Falls, Galion, Hamilton, Hudson, Lebanon, Niles, Oberlin and Painesville.

The Union's Position

The Union proposes to increase the longevity supplement rate from $3.50, as it appears like current Contract, to $4.00 for each month worked as a Wadsworth employee. The Union asserts that the Employer's own evidence submitted in hearing discloses that there are comparable cities that have greater longevity payments for their employees than does Wadsworth.

Findings and Recommendations

Article XVI – Longevity Pay. I have considered the arguments of the Employer and the Union concerning the longevity issue of longevity pay, and I conclude that the Employer's position is meritorious. The data regarding longevity payments from comparable cities, relied on by both Parties in this case, indicates that the amount of longevity compensation paid by Wadsworth places it in the top half of cities making such payments. Furthermore, I am persuaded by the Employer's contention that increasing longevity payments for this bargaining unit in today's economic climate is unwarranted and is unnecessarily destabilizing to the Employer's longevity formula for all of its full-time employees. Moreover, I have seen no indication, with respect to this unit, that the Employer is having difficulty in attracting or retaining employees with its current longevity compensation formula.

Accordingly, for the above reasons, I recommend that the language in Article XVI, Longevity Pay of the current Contract be retained.

4. Article XXII – Health and Life Insurance:

The Employer's Position

The Employer asserts that from 2007 through 2009 its total cost of employee health insurance has increased in excess of 12%. The Employer offers its employees a very high level of insurance benefits and claims it proposes "moderate increases" in the unit's monthly employee premium contributions during the term of a new Contract. It proposes the following employee contributions:

Year	Employee Monthly Contribution
2010	$30 Single, $60 Family
2011	$40 Single, $80 Family
2012	$50 Single, $100 Family

The Employer asserts that its proposed employee premium contributions for 2010 and 2011 are less than the current statewide average, as set forth in SERB's 2008-2009 17th Annual Report on the Cost of Health Insurance, which is $40.38 for single coverage and $120.92 for family coverage. The Employer maintains that its proposal is "appropriate with the times."

The Employer also proposes eliminating the clause in the current Contract's Article XXII, Section 1 which states that bargaining unit employees will not pay more for health insurance than other of Wadsworth's General Fund non-bargaining unit employees. The Employer argues that this removal of language is appropriate because bargaining unit employees receive "guarantees by contract that the... non-bargaining unit employees do not receive." The Employer agrees that unit employees should continue to receive the same or similar level of health insurance benefits as other non-bargaining unit

employees. It contends that if the Union wishes "... to pay as non-bargaining unit employees, then it should propose language that [its] unit employees receive the same health insurance coverage as non-bargaining unit employees with no other guarantees."

The Employer also wishes to include language in Article XXII, Section 1, which would require it, upon the Union's request, to "... meet with the Union approximately six (6) months into the plan year to review the health insurance plan costs and any related problems."

The Union's Position

The Union proposes that the language of Article XXII, Section 1 only change by substituting its suggested employee contribution cap amounts, which are less than those proposed by the Employer, and by adding the following last sentence to paragraph 3 of Section 1:[9]

"Upon request, the City will meet with the Union approximately six (6) months into the plan year to review for health insurance plan costs and any related problems."

In all other respects it wants the current language of Article XXII, Section 1 to remain the same.

Findings and Recommendations

Article XXII, Section 1. It was apparent during the fact-finding hearing, with respect to health insurance, that the Parties were both extremely satisfied with the level of benefits provided by the Employer's health care plan. The summaries of medical, prescription, and dental benefits placed into evidence by the Employer provide

[9] The Union proposed the following new employee contribution caps:

2010	$20 Single, $40 Family
2011	$25 Single, $45 Family
2012	$30 Single, $50 Family

justification for their satisfaction. I credit the Employer's assertion that it has exerted its best efforts to maintain that high level of benefits at the most reasonable cost possible – and that doing so is becoming more difficult.

According to the SERB 2008 - 2009 17th Annual Report on the Cost of Health Insurance, the average monthly percent of the total health insurance premium cost paid by employees in the Akron–Canton area is 7.1% for single and 7.5% for family coverage. The Employer asserts that is approximately the percentage bargaining unit employees now pay under the current Contract – *i.e.* 7.1%.

The Employer's summary of health insurance premium contributions from employees located in comparable sized cities to Wadsworth (Bowling Green, Bryan, Cuyahoga Falls, Hamilton, Hudson, Lebanon, Oberlin, and Painesville) reveals that those cities have a variety of premium contribution requirements for health care insurance for their employees. Two cities in the Employer's table appear to require greater contributions from employees than are contained in the Wadsworth proposal. The rest appear to require less or have formulas or plans which indicate they are not comparable examples. The Employer's table of health insurance information reveals that of those aforementioned cities in its table, three (3) have "me too" provisions similar to the one which exists in the current Wadsworth Contract. Three (3) of those cities have no such "me too" provisions in their contracts, and two (2) cities arguably have no applicable similar language.

After considering the Employer's summary comparability evidence and the actual language, where it exists, regarding healthcare insurance contributions set forth in contracts submitted into evidence by the Union, it would appear that both Parties have

advanced plausible arguments concerning this criterion.[10] However, there may be many reasons not in evidence which might cause bargaining units in different cities to require different contributions from their employees than those required of employees in Wadsworth. It is common knowledge that, generally, insurance costs have risen and the average monthly employee contribution for insurance premiums has been increasing.

I note that within the Employer's own represented units, the employees contributions are or will be as follows:[11]

Union	Calendar year	Employee Contribution Cap Per Pay Period
AFSCME	2010	$30 Single, $60 Family
IAFF	2010 2011	$30 Single, $60 Family $40 Single, $80 Family
OPBA (Three different contracts)	2010(1/1-8/31) 2010(9/1-12/31) 2011 2012	$15 Single, $30 Family $20 Single, $40 Family $30 Single, $60 Family $30 Single, $60 Family

An examination of the existence of "me too" provisions in those contracts reveals the following language:

1. AFSCME (2008-2010 Contract)

"Bargaining unit employees shall receive the same health care coverage as other general fund employee non-bargaining unit employees. However, no bargaining unit employees shall be required to pay more for health coverage than any other bargaining unit employee."

[10] Galion, Hamilton, Painesville, Oberlin, Hudson, and Cuyahoga Falls
[11] The information was set forth in contracts submitted by the Employer.

2. IAFF (2009-2010 Contract)

"Bargaining unit employees shall receive the same health insurance coverage as other City non-bargaining unit employees. However, no bargaining unit employee shall be required to pay more for health care coverage than any other City of Wadsworth non-bargaining unit employee."

3. OPBA (2010-2012 Contracts (Three [3] in number)

"Bargaining unit employee[s] shall receive the same health care coverage as other City general fund, non-bargaining unit employees."

After considering the positions of the Parties on the health insurance matter and all the evidence they presented, I have concluded that neither of their positions is completely acceptable. I note that the Employer can not significantly hope to address its health-care costs solely with its suggested increases in the employee contributions. I suspect that the Employer only seeks to differentiate this unit's employee contribution costs from those in its other represented bargaining units and from those of its non-represented employees. All of the Employer's employees, both represented and non-represented, benefit from being included in the largest possible group for the purpose of securing the lowest possible health insurance rates. It seems reasonable, therefore, that the IBEW represented employees should also share in similar premium contribution requirements. I recognize that some premium contribution adjustment upward may be appropriate. I, however, conclude that most of the language suggested by the Union for the new Article XXII, Section 1, including the "me too" provisions, is preferable to that which is suggested by the Employer. The proposed rates that I recommend differ from those suggested by both Parties.

I recommend that the following language, which also contains new contribution requirements, replace that which appears currently in Article XXII, Section 1:

> **Article XXII, Section 1. Health Insurance. Employees shall contribute an amount towards the health insurance costs. Employee contributions shall be paid each pay period. The Employer may increase the employee contributions each year but in no case shall the employee contributions exceed the following amounts:**
>
> | Calendar Year | Employee Contribution Cap |
> |---|---|
> | 2010 | $20 Single, $40 Family |
> | 2011 | $30 Single, $60 Family |
> | 2012 | $35 Single, $70 Family |
>
> **Bargaining unit employees shall receive the same health care coverage as other City General Fund, non-bargaining unit employees. However, no bargaining unit employees shall be required to pay more for health care coverage than any other City of Wadsworth General Fund non-bargaining unit employee.**
>
> **The Employer shall have the right to change insurance companies as long as the benefit levels are the same or similar to the benefit levels in place at the inception of this Contract. The City shall be permitted to utilize its desired total steerage program. Such coverage shall consist of comprehensive major medical, prescription and dental coverage. The health insurance benefits shall become effective on the first calendar day of the month following the month in which the employee is appointed to a full-time position. Upon request, the City will meet with the Union approximately six (6) months into the plan year to review the health insurance plan costs and any related problems.**

5. **Article XXXX – Duration of Agreement, Subsequent Negotiations, Entire Agreement**

The Employer's Position

The Employer proposes that the current Contract language regarding this Article should be retained. However, the Employer realized in preparing the language proposal

for this Article that in the current Contract this Article's Sections were improperly numbered as Sections 1, 2, and 4, instead of Sections 1, 2, and 3. Accordingly, it proposes a new Article containing the exact same language, with renumbered Sections, thereby correcting that problem. The Employer submits that all provisions of the new Contract should become effective upon the date of the new Contract's execution and shall remain in full force and effect for three (3) years after that date. It opposes any application of retroactivity to any portion of the Contract.

The Union's Position

The Union recommends that all wage provisions of the proposed Contract be made retroactive to February 1, 2010 (the last date of the predecessor Contract having been January 31, 2010.) It agrees that all other language of Article XXXX remain the same and that the new Contract shall be effective upon execution and shall remain in full force and effect for three (3) years after the execution date.

Findings and Recommendations

Article XXXX. Neither the Employer not the Union presented any particular evidence with respect to this Article. Except for the issue of retroactivity regarding wages, which the Union raised during its discussion of this provision, the Parties had no significant disagreement with respect to retaining the original language of the Article. Inasmuch as retroactivity of wages was addressed and recommended in Article XI, Section 1, I need not address it again in the discussion of this Article.

I recommend that the current language of Article XXXX be retained in its entirety and that Section 4 be correctly renumbered as Section 3. I also recommend that Article XXXX be designated by the correct Roman numeral, XL.

CONCLUSION

In conclusion, the undersigned Fact Finder hereby submits the above recommendations on the outstanding issues presented in this matter and incorporates by reference into these recommendations all other tentative agreements reached by the Parties on all Articles of the proposed Contract.

Respectfully submitted and issued on the date set forth below:

Richmond Heights, Ohio

March 11, 2010
(Date)

Melvin E. Feinberg, Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that a copy of my Fact-Finding Report in SERB Case No. 09-MED-12-1482, City of Wadsworth and International Brotherhood of Electrical Workers, (IBEW) Local Union No. 306, is being sent by overnight mail to each of the following representatives of the Parties on the date set forth below:

1. Mr. Jim Kovacs
   Human Resources Manager
   City of Wadsworth
   120 Maple Street
   Wadsworth, OH 44281

2. Mr. Steve Stock, Union Organizer
   International Brotherhood of Electrical Workers,
   IBEW Local Union 306
   2650 South Main Street
   Akron, OH 44319

I also certify that on the same date set forth below a copy of my Fact-Finding Report is being sent to SERB by regular U.S.P.S. mail at the following address:

J. Russell Keith, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, OH 43215-4213

I also certify that, pursuant to the request of the Parties, a copy of my Fact-Finding Report is being sent by e-mail on March 12, 2010 to the following:

1. Mr. Benjamin S. Albrecht
   Attorney at Law
   Downes Fishel Hass Kim LLP
   balbrecht@downesfishel.com

2. Mr. Jim Kovacs
   jkovacs@wadsworthcity.org

3. Mr. Steve Stock
   steve@ibew306.org

March 11, 2010
Date

Melvin E. Feinberg, Fact Finder

Melvin E. Feinberg, Esq.
Arbitrator, Mediator, Fact Finder

5247 Wilson Mills Road, #342
Richmond Heights, Ohio 44143

(216) 291-2876 Fax: (216) 297-1385
E-mail: mefeinbergarb@yahoo.com

March 11, 2010

J. Russell Keith, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, OH 43215-4213

RE: SERB Case. No. 09-MED-12-1482
City of Wadsworth and International Brotherhood of Electrical Workers, (IBEW)
Local Union No. 306
Findings and Recommendations

Mr. Keith:

Enclosed please find a copy of my Findings and Recommendations in the above case.

Sincerely,

Melvin E. Feinberg, Fact Finder