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**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATER OF FACT FINDING BETWEEN:

City of Tipp City	:	Case. No. 12-MED-07-0674
	:	
Public Employer	:	Date of Hearing: April 15, 2013
	:	Date of Report: May 2, 2013
and	:	
	:	
AFSCME, Ohio Counsel 8, Local 2982, AFL-CIO	:	Sherrie J. Passmore, Fact Finder
	:	
Employee Organization	:	

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES:

For Employer:

John J. Krock, Vice President, Clemans Nelson and Associates, Inc
Jon Crusey, City Manager
Christy Butera, Utility Director
Scott Vagedes, City Engineer/Service Director
Brad Vath, Assistant City Manager

For Employee Organization:

David W. McIntosh, Staff Representative
Ryan McCarrol, Acting Union President
Andrew Cherry, Union Secretary

INTRODUCTION

Case Background

This case is a fact-finding proceeding between the City of Tipp City (City or Employer) and AFSCME, Ohio Counsel 8, Local 2982, AFL-CIO (AFSCME or Union). On January 22, 2013, the State Employment Relations Board (SERB) appointed Sherrie J. Passmore as the Fact Finder.

By agreement of the parties, a fact-finding hearing was held on April 15, 2013, 10:00 A.M., at the Tipp City Government Center, 260 South Garber Drive, Tipp City, Ohio 45069. Both parties submitted the required pre-hearing statements in a timely manner. At the hearing, the Employer was represented by John J. Krock, Vice President, Clemans Nelson and Associates, Inc. Representing the Union was David W. McIntosh, Staff Representative. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue her report by May 3, 2013.

On the day of the hearing, the only unresolved issue was compensation. The Fact Finder encouraged mediation. The parties indicated they had exhausted all good faith efforts to mediate and agreed to submit the issue to the Fact Finder to be addressed in her report and recommendations. Both parties presented evidence, testimony, and arguments in support of their positions on the issue. Exhibits were submitted.

Description of the Employer

Tipp City is located north of Dayton, Ohio near the intersection of I-70 and I-75. The City operates under a Council/Manager form of government, which

establishes the City Council as the legislative executive body and provides for professional management through the appointment of a municipal administrator. According to the 2010 census, the City has a population of 9,689 and covers an area of approximately 7.5 square miles. It has seventy (70) full-time employees; twenty-three (23) are in this bargaining unit and nineteen (19) are police officers in the FOP bargaining units. In addition to police protection, the City operates seventeen (17) parks and provides electric, water, sewer and refuse (billing only) services to the community.

Description of the Bargaining Unit

The Bargaining Unit consists of full-time employees in the City’s service departments: Electric Department (8 employees), Street Department (4 employees), Parks Department (3 employees), and Water Department (8 employees). The classifications covered by the agreement include: Maintenance Specialist I, Maintenance Specialist II, Groundsman, Utility Plant Operator I and II, Equipment Operator, Apprentice Lineman, Tree Trimmer/Arborist, Journeyman Lineman, and Water Treatment Plant Operator.

POSITIONS, DISCUSSION AND RECOMMENDATIONS

The only unresolved issue in this fact-finding is compensation. A brief summary of the positions of the parties on the unresolved issue will be provided, followed by a discussion and recommendation.

In analyzing the positions of the parties and making these recommendations, consideration was given to all relevant information provided by the parties and the factors set forth in Ohio Revised Code 4117.14(G)(7)(a) to (f):

- 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 employers doing comparable work, giving consideration to factors peculiar to the area and the classification involved;
- Interests 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;
- Lawful authority of the public employer;
- Stipulations of the parties; and,
- Such other factors, not limited to those above, which are normally or traditionally taken into consideration.

Position of the Employer

The City proposes to eliminate the current step system and replace it with a starting rate, midpoint and a maximum rate for each of the bargaining unit classifications. The starting, midpoint and maximum rate for each classification would be increased by two percent during each year of the contract. Employees would be able to receive an annual wage increase based upon merit. Eligible employees could receive up to a two percent (2%) wage increase based on merit in

2013, up to another two percent (2%) wage increase in 2014, and up to another one and one-half percent (1-1/2%) wage increase in 2015.

On a philosophical basis, the City feels strongly that any wage increases should be linked to performance, like in the private sector. The City believes that merit pay would motivate better employee performance.

Position of the Union

The Union proposes to increase wages contained in Appendix B by two percent (2.0%) for year one of the contract, two percent (2.0%) for year two of the contract and 2.0% for year three of the contract. Additionally, year one increases would be retroactive to December 1, 2012 commensurate with the effective date of the successive contract.

The Union is diametrically opposed to the implementation of merit increases, arguing that no acute fiscal evidence exists that supports the Employer's position. Additionally, the Union points out that there are no other bargaining unit employees at the City that have raises contingent on merit.

AFSCME's position is that all bargaining unit employees should be treated equitably and not disparately. According to the Union, the Employer cannot show an inability to afford the requested wage increase nor can it justify changing the step pay structure.

Discussion and Recommendation

Inability to pay is not an issue in this fact-finding. Both parties agree that the City can afford a reasonable wage increase. In dispute is what procedures should be used to determine wage increases.

The step system has been in place throughout the twenty plus years of bargaining between the parties. As both parties acknowledged, the system includes merit considerations. The steps in the wage scale are designed as an incentive for employees to increase efficiency, productivity and knowledge of the job over time. Employees hired at Step A or B may only be granted a step rate increase after six (6) months of satisfactory service. Subsequent increases may only be granted only after the completion of twelve (12) months of satisfactory service in a given step. (Article 17, Section 17.4). For some classifications, advancement beyond a certain step is contingent upon obtaining a specified certification or license. When an employee reaches the last step, the employee's pay tops out subject to adjustments negotiated in the wage scale. Approximately half of the employees in this bargaining unit are at the top step.

Whether merit pay serves as a motivator and under what circumstances is the subject of much debate and controversy. Based on the record before me, I cannot conclude that the proposed change in the pay system would incent better performance any more than the current system.

Internal and external comparables do not support a change in the pay system. No other bargaining unit employees in the City are under a merit pay system. The agreement reached with the FOP Police Officers unit in 2012

maintained a similar step system. With the exception of Sydney, all other jurisdictions cited by the City as comparables, use a step system for bargaining unit employees. Only Sydney has a merit pay system for bargaining unit employees, which has been in place since their first contract.

While empathizing with concerns over rising labor costs in uncertain economic times, nothing in the record empowers this fact finder under the statutory criteria to make significant changes to the procedures for determining wage increases. Having concluded that I cannot recommend eliminating the step system based on this record, the issue becomes what is an appropriate wage increase.

This same issue was the subject of fact-finding between the parties in 2012. A fact-finding hearing was held on January 31, 2012 before and a report issued on February 16, 2012 by Fact Finder John Lenehan. His report was submitted by the Union as an exhibit. Much of the evidence presented and arguments made to Fact Finder Lenehan were the same as those in this fact-finding. Fact Finder Lenehan recommended a 2% increase in wages, effective December 2011. The parties adopted his recommendation.

The financial outlook for the City has improved somewhat over the past year. In a cover letter dated October 5, 2012 to City Council accompanying his submission of the 2013 Budget, City Manager Jon Crusey stated:

Sound long-term financial planning of past Council's and administrations has placed the City in a positive economic position, in the short-term. The purpose of building up reserves during a good economic climate is to be able to utilize those resources to maintain service levels during weak economic times. The City's primary operating funds (General, Electric, Streets, Water, & Sewer) are all positioned to maintain adequate fund balances based upon the assumptions put forward in this budget document.

He also noted in this cover letter that the City's "FOP contracts include a 2% cost of living adjustment in 2013 and 2014" and that wage adjustments of 2% for AFSCME and non-bargaining unit employees had been included in the budget. The budget was approved by City Council.

In a City Work Session on January 22, 2013, Finance Director John Green provided Council with the 2012 Year-End Financial Update. He reported that

Mr. Green reported the General Fund, Electric Fund, Water Fund and Sewer Fund ended the year in better shape than budgeted and better than anticipated when the 2013 budget was being prepared. The General Fund benefited from higher than anticipated income tax receipts, estate tax receipts, and EMS billing receipts as well as lower than anticipated expenditures.

Mr. Green concluded the City's major funds ended the year better than anticipated.

Under the City's proposal, bargaining unit employees would not be eligible for more than a two percent merit increase during the first and second year of the contract. In the third year, bargaining unit employees would be limited to one and a half percent merit increase. The proposal does not include any cost of living adjustments. In contrast, the City explained that non-bargaining unit employees are eligible for up to a five percent merit increase based on annual performance reviews and the record reflects that non-bargaining unit employees are also given cost of living adjustments.

Based on the City's financial outlook, and the increases already given to employees in other bargaining units and budgeted for non-bargaining unit employees as cost of living adjustments, a similar wage increase for this

bargaining unit appears affordable and reasonable. The City's own proposal includes adjusting the starting and top rate of the salary scale by two percent in each year of the contract.

Consideration of external comparables also supports a wage increase. The City provided an analysis of the pay rates for the smaller cities in the area with the same or similar job classifications as those in the bargaining unit. The analysis indicates that while starting wages for Tipp City are lower than for most of the cities, they are higher than most at the maximum step. I conclude, as did Fact Finder Lenehan, that the wage rates for the bargaining unit employees appear to be reasonably competitive with those of the other cities.

The City also submitted a chart and bar graph comparing bargaining unit wages with median household income. The chart shows that bargaining unit wages for three of the ten classifications have risen higher than median income. While this comparison certainly raises questions, I concur with Fact Finder Lenehan that it is not very helpful in determining whether to grant or deny a wage increase here. He explained that:

As to the analysis of median household income against bargaining unit wages this is meaningless because there are too many variables and unknowns. A bargaining unit is being compared to a transient population of different trades, professions and income sources.

Recommendation: The Fact Finder recommends that the wage rates in Appendix B "WAGE SCALE" of the current Collective Bargaining Agreement between Tipp City, Ohio and AFSCME Local 2982 be increased by 2.0% in each year of the

contract, to be effective December 1, 2012, December 1, 2013, and December 1, 2014.

CONCLUSION

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in Ohio Revised Code 4117.14, the Fact Finder recommends the provisions herein.

In addition, all tentative agreements reached by the parties are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted,

/s/ Sherrie J. Passmore
Sherrie J. Passmore
Fact Finder

May 2, 2013

CERTIFICATE OF SERVICE

This Fact Finding Report was sent by email on May 2, 2013 to:

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/s/ Sherrie J. Passmore
Sherrie J. Passmore