

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

Communications Workers of America,
Local 4502, AFL-CIO

Employee Organization

Case No. 2017-MED-01-0073

And

City of Columbus

Fact Finder: Sandra Mendel Furman

Employer

FACT FINDING REPORT AND RECOMMENDATION

INTRODUCTION

The hearing in this matter took place in Columbus, Ohio at the Columbus Police Academy on North Hague Avenue on August 30, 2017. The parties presented witnesses and extensive exhibits as evidence in support of their respective positions. Bargaining committee representatives were present in significant numbers on both sides. Due to the numerous individuals present (some were actively involved in caucuses), the Fact Finder (FF) will reference witnesses and counsel only.

The Parties submitted post-hearing briefs on/before September 30, 2017. Required extensions and statutory waivers have previously been signed.

A stipulation related to the FF's jurisdiction and authority to make recommendations regarding various Memoranda of Understanding (MOU) and Letters of Agreement (LOA) and Side Letters was made at the hearing. Other agreements are reflected in the discussion herein.

FINDING OF FACTS¹

1. The bargaining unit consists of approximately 1,436 employees who are regular full-time and part-time employees in classifications listed in Attachments A and B of the State Employment Relations Board (SERB) certification of Election Results and of Exclusive Representative dated February 17, 1994 in SERB Case No. 93-REP-07-0139 and those classifications referred to in Attachment B of the 2014-2017 Collective Bargaining Agreement. Excluded from the unit are all other employees, including, but not limited to, all Health Department employees, elected officials, Directors, Deputy Directors, Administrators, Superintendents, Assistant Administrators, Assistant Superintendents, all employees of the Mayor's Office and City Council, and select persons in classifications which deal directly with collective bargaining issues (the specific classifications and select persons so excluded from the unit as of November, 1993 are listed in Attachment C of the SERB Certification dated February 17, 1994 in SERB Case No. 93-REP-07-0139); short-term employees (i.e., those employed on a temporary or seasonal basis); part-time employees not regularly employed for at least twenty (20) hours per week; student interns; all employees represented for purposes of collective bargaining in other bargaining units (IAFF, Local #67; FOP, Capital City Lodge No. 9; FOP/Ohio Labor Council; AFSCME, Local 1632; AFSCME, Local 2191); and any supervisory, managerial, administrative, or confidential positions the same as or similar to those listed in Attachment C of the SERB Certification dated February 17, 1994 in SERB Case No. 93-REP-07-0139.²
2. The parties have had a collective bargaining agreement (cba) since at least 2004.
3. CWA's predecessor employee organization known as CMAGE had cbas with the City in the period for at least twenty years.
4. The City's other bargaining units include the International Association of Fire Firefighters, Local No. 67 (IAFF); Fraternal Order of Police, Capital City Lodge No. 9 (FOP); Fraternal Order of Police, Ohio Labor Council, Inc. (FOP/OLC); Ohio Council 8, American Federation of State, County and Municipal Employees AFL-CIO and its Local 1632 (AFSCME 1632); and Ohio Council 8, American Federation of State, County and Municipal Employees AFL-CIO and its Local 2191 (AFSCME 2191).

¹ The parties submitted voluminous documents supporting the respective position argued. The facts listed above represent only a very small portion of the record made and reviewed. To the extent some exhibits are not referenced specifically, the FF made editing decisions so as to not unduly lengthen the report.

² The City utilizes a form of designation for the CWA bargaining unit: (1) non-overtime exempt employees known as "D-Class" employees and (2) overtime exempt employees known as "E-Class" employees. D-Class employees include administrative, clerical, professional, supervisory, managerial and specialty employees. E-Class employees include higher level supervisors, managers and other specialized employees.

5. The City's management compensation plan (MCP) establishes the wages, health insurance and other fringe benefits for management employees.
6. Negotiations for a successor collective bargaining agreement (cba) began in February 2017. Jennifer Edwards, Esq. is the Chief Negotiator for the City; Jonathan Wentz, Esq. is the Chief Negotiator for CWA.
7. The bargaining teams met on nineteen (19) occasions in an effort to reach an agreement.
8. Three days of mediation sessions facilitated by FMCS were scheduled to assist in the bargaining process.
9. In 2008 Columbus was as was most of the nation adversely affected by a stark downturn in the economy. Mayor Michael Coleman convened an Economic Advisory Committee (EAC) to make recommendations on how to improve the City's finances. City Introductory Materials Tab 1.
10. The EAC made recommendations for future stability. The City began implementing the recommendations in a multi-year phased in approach.
11. The EAC recommendations continue to guide the City's fiscal policies.
12. The City committed to a 10 Year Reform Plan within the EAC. City Introductory Materials Tab 3. The 10 Year Reform Plan contains cost containment initiatives. The relevant matters are:
 - a. phasing out pension pick-up for City employees
 - b. increasing employees' share of monthly health insurance premium contributions
 - c. reducing the costs of the various health insurance plans by making modest plan design changes.
13. The City's 2012 Accountability Report focused on the City's progress toward cost containment for personnel.
14. The current Three Year Financial Plan continues to emphasize its focus on personnel cost containment.
15. The City's 2017 budget is based on an assumption of cooperation from the City's multiple bargaining units. City Introductory Materials Tabs 5; 6; 7.
16. The EAC and the 10 Year Reform Plan are the City's chosen roadmap for negotiations with CWA, its other bargaining units and its managerial employees since 2009.

17. In 2008 the EAC stated the City “cannot continue” to pay for the employee’s share of pension contributions. City Introductory Materials Tab 1, p viii.
18. The City’s 10 Year Reform Plan passed in May 2009 identified that the “practice of paying the employee share of retirement costs cannot continue.” City Introductory Materials Tab 3.
19. The 10 Year Reform Plan’s “phase out pension pick-up” initiative directed the City to phase out the pick-ups over time and discontinue the practice for new employees. City Introductory Materials Tab 3.
20. The City reduced its responsibility for paying the employees’ share of Ohio Public Employee Retirement System (OPERS) pension contributions in a multi-year plan throughout its workforce. City Introductory Materials Tabs 1; 3. Since 2008 the City has focused on eliminating pension pick-up provisions from all of its cbas.
21. The City’s 2012 Accountability Committee report found that the City began phasing out pension pick-ups in 2010 and that “[a]ll contracts have gained concessions in lowered pickup percentages.” City Introductory Materials Tab 5, p 3.

Regarding Columbus Municipal Employees Government Association /CMAGE (now CWA), the report stated:

Through two successive contracts, the city has reached agreement with CMAGE (supervisory, professional and technical workers union) to reduce the pickup. The most recent contract runs through 2014 and decreased the pickup to 7% in November 2011, to 6% in November 2012. In November 2013, the rate will decrease to 5%. The contract also eliminated the pickup for all new hires as of July 24, 2011. Estimated General Fund cumulative savings through 2019 are \$7.7 million. Above average increases in wages in 2010, 2011, and 2013 have been deducted from the 2010-2019 gross savings estimates. (*Id.* at pg. 4).

22. The City has also increased across the board City employees’ monthly insurance premium contributions to cover increasing costs of health insurance. City Introductory Materials Tabs 1; 3.
23. CWA has agreed in prior bargaining rounds to the following reductions in pension pick-up: Decreased to 4% in 2014; 3% in 2015; and 2% in 2016.
24. The City has not claimed inability to pay.
25. Under the current cba, an overtime eligible employee who works more than 48 hours in a 7day work period receives double time for every hour worked in excess

of 48 up to 56 hours. All hours worked in excess of 56 hours are paid at time and one-half rather than double time.

26. Prior to commencement of the record hearing the parties engaged in mediation with the FF. Multiple issues were resolved in that session. These were stated on the record. Tp10-13.
27. All side letters and MOUs were renewed by agreement of the parties with the exception of Side Letter 17. [See FF Recommendation re: Side Letter 17 *infra*]
28. The parties agreed to the City's proposed language on Article 15.5(D) in mediation. [See text *infra*.]
29. The Union withdrew its proposal for Article 15.6 regarding call-backs in mediation.
30. The Union accepted subsection 15.5(D) City proposal in mediation. [See text *infra*.]
31. The Union withdrew its proposal to add "union leave" to Section 15.4(B) Overtime Eligibility and Pay in mediation.
32. Agreement was reached on subsection 17.1(D) City proposal in mediation. [See text *infra*.]
33. The parties reached agreement on the terms of Article 26-Duration City proposal [to be renumbered; see text *infra*].

Statutory Factors

RC 4117.14(C)(4)(e) and (G)(7)(a) through (f) direct the FF "to take into consideration" the following criteria in reaching recommendations on each of the issues in dispute:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interests and welfare of the public, 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;

- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The FF considered each and all of the above factors in her recommendations as relevant and as noted below. The discussion below may highlight some factors in particular in certain instances. Other factors had no relevancy to the particular recommendation.

ISSUE 1 Article 13 – Sick Leave

City Position

Even without the Union having demonstrated an evidentiary basis the City proposed an additional 8 hours of sick leave and 3 days of paid bereavement leave for unit employees. The City proposed increasing the Union's sick leave benefit at a significant monetary cost. The additional bereavement leave the City offered will allow those employees who suffer a loss in their immediate families to have additional paid time away from work.

The Union's current sick leave allowance is sufficient to meet its members' needs. CWA employees used fewer than 35 hours of sick leave on average in 2016. This represents less than 50% of the current yearly allowance of 72. On average CWA employees carried over 83 sick leave hours in 2016. CWA employees carried over on the average more than an entire year's worth of sick leave from 2016 to 2017. City Sick Leave Tab 1.

Large numbers of Union members also cashed out sick leave. In 2016, 44% of CWA members cashed out sick leave at a cost of \$1,056,170 to the City.

The Union failed to demonstrate need to increase its sick leave allowance. The Union did not provide examples of any individual who experienced a hardship based on the current entitlement. Tp 126:20-127:2.

The Union failed to undertake any analysis of its members' sick leave balances. Tp 130:12-20. The Union stipulated that it "did not request information regarding its members' sick leave." Tp 131:3-5. The Union's failure to inquire into the sick leave balances of its members demonstrated the lack of evidence for its position seeking upwards adjustment in the hours allotted.

Despite the lack of evidence of a need, the Union's emphasis on the importance of an increase to its annual sick leave allowance led the City to propose an increase of 8 hours to the Union's annual sick leave allowance.

The City also offered an additional 3 days of bereavement leave. The additional sick and bereavement leave if recommended will provide extra benefits to CWA at a considerable cost to the City.

The FF should recommend the City's proposal to increase CWA's sick leave allowance by 8 hours and to provide 3 additional days of bereavement leave.

Union position

The Union proposed to increase the annual sick leave entitlement from 72 hours to 84 hours in January 2017 then to 96 hours in January 2018.

The Union's proposal does not affect the sick leave carry-over cap in Section 13.1(A) from the current 400 hours.

The Union's proposal would make CWA bargaining unit employees' sick leave benefit the same as employees in two other bargaining units including employees in AFSCME Local 1632 -many of whom are supervised by CWA members. Union Ex 39, p 6; Tp 120-121. Parity with employees it supervises is a minimal objective for the unit.

Union witness Debbie Dantor testified that the historical reasons for fewer annual sick leave hours for CWA members compared to Local 1632 members – a more favorable disability waiting period and more personal days – no longer exist. This testimony was uncontroverted.

The Union's proposed increase to the enhanced sick leave entitlement is phased in over two contract years. The financial impact is not frontloaded. It is true the Union did

not offer evidence that the current 72 hour sick leave entitlement is “insufficient” based on members’ health needs. Neither did the City prove that differences in annual sick leave hours in the various City cbas are based on the particular health needs of employees in any particular bargaining unit. Union Ex 39, p6.

It should be noted that the right to cash out unused sick leave is not unique to CWA members. AFSCME 1632 has the same right. Union Ex 16.

While the FOP/OLC unit and MCP have 72 hour annual sick leave entitlements, the two AFSCME units have 96 hour allowances.

Police and Fire bargaining units have significantly more sick leave: 120 hours and 168 hours respectively.

It is noted that Police and Fire have less favorable disability benefits. Union Ex 39; Tp 12. If the Police and Fire internal comparables are not considered for that reason, the Union’s proposal is still reasonable because it seeks no more annual sick leave than the City has agreed to provide two other bargaining units with disability benefits. Also, the Union proposal phases in the proposed increase in hours reducing the fiscal and operational impact.

Analysis

As noted by the City, the record did not contain anecdotal evidence or statistical evidence of CWA members being harmed or adversely impacted by the current levels of sick leave. There was no singular let alone multiple examples of any CWA members having exhausted all leave and needing additional hours. The incidences of members being able to cash out balances was part of the record. The cash out incidences reflect that there are sufficient hours in members’ sick leave banks to permit both usage as needed and to allow those who are fortunate enough not to need sick leave to gain a bonus payout. That system benefits both parties in a time proven manner.

The addition of 8 hours more sick leave creates a double benefit: those who may need more hours now have more available hours; and those who are able to cash out know that 8 hours is there to use as needed. It is not a benefit to anyone when persons come sick to work in order to have the potential of a greater cash out in the future. Internal comparables for the City are not consistent but that should not stand in the way of what

is in essence a compromise result. Adding 8 hours to the bank is an appropriate result given all the facts and circumstances considered. Furthermore there is no strong argument regarding internal comparables as the benefit is variable throughout the City..

The addition of 3 days of bereavement leave is appropriate for reasons requiring little rationale. Now employees will be able to take leave as needed without impacting other leave banks in order to attend to family situations and travel as needed. Bereavement leave is neither a radical concept nor a benefit that will be used by every employee. The economic costs are far outweighed by the policy considerations in allowing employees time off for this reason.

RECOMMENDATION³

The FF recommends the City proposal as stated below. All other language not cited below remains as per the 2014-17 cba. [13.1 para. F- H unchanged]

Section 13.1. Computation of Sick Leave Bank for Full-Time Employees.

- (A) **Sick leave banks for full-time employees shall consist of current annual entitlements under the terms and conditions of this Agreement, plus any hours carried over from previous years, transfers from other political subdivisions and hours carried over from other City employment outside the CWA bargaining unit under the terms of this Agreement, less any appropriate reductions or deductions as outlined below. For purposes of carrying sick leave from year to year, the sick leave bank may be no more than four hundred (400) hours, less the annual sick leave entitlement.**
- (B) **On the first pay period of each calendar year, each full-time employee employed on that date shall receive eighty (80) hours of sick leave with pay for the remainder of that calendar year.**
- (C) **Each full-time employee hired on or after the first pay period of each year shall, on the date of hire receive his/her sick leave with pay for the remainder of that calendar year computed, as follows: six and 67/100 hours for each calendar month in the calendar year of hire,**

³ For clarity, all bolded language in a section labelled **recommendation** is the recommended changes/inclusions to the successor cba and in some instances existing language in order to provide context.

For purposes of not unduly lengthening this report, unchanged language is usually not reproduced. The parties should take the bolded language as signifying recommended changes but also look to the current cba for the remaining provisions. A careful effort was made by the FF to indicate the intention.

commencing with the month following the month in which the employee was hired.

- (D) If an employee is in unpaid status for forty (40) hours or more in a calendar month, six and 67/100 hours shall be deducted from the employee's paid sick leave entitlement. For purposes of this Article, hours in unpaid status do not include military leave without pay or unpaid FMLA hours. No other unpaid absences shall be counted as hours of work.

When an employee is required to report to work and does so report but is denied work because of circumstances beyond his/her control, absence from work under these circumstances shall not be considered as unpaid work status for purposes of this paragraph, except if the employee is laid off as provided in this Contract.

- (E) If an employee changes from full-time non-seasonal status to part-time or seasonal status during a calendar year in which he/she was eligible for sick leave, six and 67/100 (6.670) hours shall be deducted from his/her paid sick leave account for each full calendar month in which the employee is in part-time or seasonal status.

Section 13.2. Eligible Uses of Sick Leave with Pay; Procedures [NEW language at (7) only; all other paragraphs remain static]

- (A) Sick leave with pay will be at an employee's regular straight-time hourly rate and shall be allowed to full-time employees in one-tenth (1/10th) of an hour increments for the following purposes:

...

- (7) Effective at the beginning of the pay period which includes January 1, 2018, up to three (3) of the five (5) days of available leave in section 14.13 shall be paid as bereavement leave and not deducted from the employee's sick leave bank.

ISSUE 2 Article 15 Overtime

Article 15.4 – Overtime Contribution

City Position

The City proposes no change to the current language covering overtime payments.

Existing policy appropriately compensates employees while remaining fiscally responsible. The FF report should recommend maintaining current language.

The current language already provides a greater benefit than required by law. There is no statutory requirement that employees be paid double time. The current cba provides employees at least 1.5 times their base hourly rate for all hours over 40 and double time for hours 48 through 56. This policy appropriately compensates employees while being fiscally responsible.

The Union proposed to eliminate the cap for hours over 56 providing for double time to be paid for all hours worked over 48 in any and potentially every work week. Removing the cap on double time would cost the City more money. Absent Union demonstrated need the City proposes maintaining current language. Such current language already provides CWA members double time.

Union Position

Approximately 450 bargaining unit employees are overtime eligible. Tp 134. The Union's proposal seeks to eliminate the cap on double time for D-class employees in Section 15.4(B).

It withdrew its proposal on counting Union Leave for purposes of overtime calculation thereby indicating it is willing to give and take.

The cap once removed will provide members appropriate compensation for extraordinarily long work hours. The current cba language results in a windfall to the City. It takes money away from those overtime eligible employees who work the most hours.

Union witness Dave McCune President of Local 4502 testified that the double time cap was introduced as a cost saving measure in the recessionary period of 2008-2011 cba. Tp 135. It remained in the cba despite completely different economics which have evolved. Approximately 1/3 of the CWA bargaining unit is impacted by the cap. Tp 134-135. No other bargaining unit has a like cba provision. Union Ex 39 p10. To further support evidence of the internal inequity, overtime eligible employees covered by the MCP are not subject to a double time cap. Tp 136.

Management decides whether CWA members work overtime. When the need for long work hours arises CWA members are expected and needed to respond. In the absence of any evidence indicating that it is cost prohibitive to remove the cap fairness

necessitates that this holdover provision from the Recession be removed from the cba. Internal equity likewise requires this result.

Analysis

The FF supports the change in language urged by the Union. The Union's rationale is persuasive. The cap on hours worked over 56 *just for overtime eligible CWA members* bears no relationship to reason, economy or equity. There was no evidence presented that assignment of work at that high level was a frequent or predictable occurrence. That takes away the economic argument. The economic argument is further affected by the fact the City makes the assignments and thus ultimately controls these costs. If it needs to assign overtime it decides when and the number of hours to be worked.

The costs of this recommended language are speculative at best. It is inequitable and inconsistent with internal comparables to create a totally artificial distinction between the bargaining units for overtime eligibility on this basis. Although the historical context was missing from the record for the genesis of this language, it makes no sense at this juncture when the economy and City resources are growing and expanding. Internal comparables support the recommendation.

RECOMMENDATION

The FF recommends the following language for Article 15.4: [Only section 15.4 (B) Is changed; all other existing language is unchanged]

Section 15.4. Overtime Pay.

- (B) **Overtime Eligibility and Pay.** When any D-level employee works between forty (40) and forty-eight (48) hours in a seven (7) day work period, he/she shall be paid at a rate of one and one-half (1-1/2) times his/her regular straight-time hourly rate of pay for each overtime hour worked. Overtime worked beyond forty-eight (48) hours in a seven (7) day work period shall be paid at double time his/her regular straight time hourly rate. Overtime pay shall be received in one-tenth (1/10th) of an hour segments. For purposes of this Article, time worked shall include only that time spent on duty as provided by the Fair Labor Standards Act (FLSA), plus time compensated but not actually worked for jury duty, holidays, compensatory time, and vacation leave, but shall not include any other uncompensated periods or time which is compensated but not actually worked, including but not limited to sick leave, injury leave, or any other paid or unpaid leave of absence. Call-back hours not worked will not be counted towards overtime (time and

one-half or double time) eligibility. All overtime shall be paid on the basis of a regular straight-time hourly rate calculated by dividing an employee's annual salary by 2080.

Article 15.5(D) - Payment Upon Certain Appointment, Separation from City Service or Death.

The parties reached agreement during the hearing on the proposed language for this section.

RECOMMENDATION

The FF recommends that due to the parties' agreement, the following language be approved for Article 15.5 (D): [part of **Article 15.5 Compensatory Time**]

(D) Payment Upon Certain Appointments, Separation from City Service, or Death

An employee who is appointed to an exempt position with the City, separated from City service for any reason, or dies while still employed shall be paid for any unused compensatory time account balance to his/her credit prior to starting the exempt position, upon separation, or upon death (less applicable withholding), less any amounts owed by the employee to the City. In the event of death, the payment shall be made to the employee's surviving spouse or to the employee's estate in the event there is no surviving spouse. Such payment shall be calculated by multiplying the employee's regular straight time wage rate at the time of separation or death by the number of hours in his/her compensatory time balance.

Article 15.6 Call Back Assignment and Pay

The Union withdrew its proposal at mediation. The City recommended current language.

RECOMMENDATION

Current language as stated in the 2014-17 cba language for Article 15.6.

Side Letter 14

As stated above, all Side Letters and MOUs with the single exception of Side Letter 17 were renewed. Because there was specific discussion regarding Side Letter 14, the FF confirms herein that it remains as written.

RECOMMENDATION

Side Letter 14 remains per current language.

Issue 3 Salaries and Compensation

Article 17.1 Base Pay and Merit Pay

City's Position

A fiscally responsible wage increase is consistent with the City's continued commitment to the EAC's recommendations, the 10-Year Reform Plan and the City's obligation to be the responsible steward of taxpayer dollars. The City's proposal is fair and equitable.

The City proposed 1.5% annual PBI increases effective the pay period including 4-24-17; 4-24-18 and 4-24-19.⁴

The City's improved financial position is the result of responsible fiscal policies and continuing a clearly defined path toward realization of long-term goals and reforms recommended by the EAC. Tp 24:7-13. The City continues to address its personnel "costs in order to resolve the structural imbalance." The City has made fiscally responsible progress since 2008. It should not abandon the path that brought that result.

The City's position is confirmed by its recently negotiated cbas with AFSCME 1632, AFSCME 2191 and FOP/OLC. Union Ex 6; 12; 16. The City was able to provide a more generous wage package to those units because it also achieved changes to pension pick-up, health insurance plan design and monthly employee insurance premium contribution rates. Union Ex 6; 12; 16.

The City's wage proposal is also supported by external comparables. Tp 24:13-15. SERB's Fact Finding/Conciliation Report Statistics indicate employers' average wage offers were 1.13% and 1.54% for the first and second quarters of 2017. The average annual award following Fact-Finding and Conciliation over the same period were 1.84% and 2.4% respectively (i.e. 7.2% over the life of a 3 year contract). Bloomberg cited the median wage increase for state and local government bargaining units for 2017 was 2.0%.

Despite the fact the City is not arguing an inability to pay this fact does not mean that the City should ignore its duty to taxpayers. Demanding a wage increase because it

⁴ The parties use the phrase percentage base increase (PBI) to signify an across the board wage increase.

would not bankrupt the City is an insupportable position. The Union failed to provide justification for its proposal. The CWA proposal demanded wage increases greater than those received by the City's other bargaining units historically and presently. The Union's proposal is silent on a reciprocal consideration on the cost containment measures agreed to by those other bargaining units. Union Ex 6; 12; 16.

CWA's proposed wage increase is higher in year 3 than that received by FOP/OLC. Union Ex. 12. FOP/OLC received an annual 3% wage increase for 2017-2019. As a quid pro quo FOP/OLC agreed to the City's health insurance plan design and health insurance proposals and a 3% pension pick-up reduction. Thus the City received consideration for the higher wages in the form of other reductions. This Union has not made like concessions.

Union Position

The Union proposed a 3% PBI wage increases on the same dates listed above but in the third/last year of the cba the Union sought a 3.25% increase. The City's controlling financial documents including the FY16 CAFR; FY13, FY14, FY15 and FY16 Year End Financial Reviews and the FY17 City of Columbus Budget described an economically thriving City that fully recovered from the "Great Recession". Union Exs 1, 22 - 26.

The City did not claim an inability to pay. The City did not claim that the Union's proposals would be detrimental to its financial condition. Tp 30-32. Instead the City claimed that Union's proposals are inconsistent with certain policy goals. The City explained its rejection of the Union's proposals as consistent with being fiscally prudent and a good steward of taxpayer monies. Tp 27.

The Union argued to the contrary that its proposals are consistent with those standards. History also plays a significant factor in the Union's rationale.

During the recession CWA employees were furloughed to save money. CWA worked under a 2008-2011 cba that contained depressed wages and concessionary working conditions. Union Ex 14. CWA members made real economic sacrifices-in some cases disproportionate- for the taxpayers' benefit. The Union sought in this round of negotiations to make up lost ground and regain its position relative to other City employees. Its proposals are consistent with that goal.

In the 2005-2008 cba and the 2014-2017 cba the Union secured a cumulative PBI of 9%. Union Ex 39, p 20; Union Ex 11; Jt Ex. 1. AFSCME unit employees also received 9% cumulative increases over the terms of their cbas covering the same period. Union Ex 39, p20; Union Ex. 13; Union Ex 2.

There is precedent for wage increases in the range proposed by the Union. CWA members have also received PBIs that in the aggregate exceeded by .25% the aggregate PBIs received by AFSCME members. Union Ex39 p20; Union Ex15; Union Ex3.

Despite some historical gains CWA members lost significant ground as a result of the recession when compared to other City employees.

In the 2008-2011 bargaining cycle CWA members received a 6% increase over the cba term compared to 9% received by AFSCME Local 1632 members. Union Ex 39, p20; Union Ex14, Union Ex10. CWA members not only received 3% less than other City workers, CWA members also deferred the August 21, 2008 scheduled 1% increase until January 1, 2010. Union Ex14; Tp158. Admittedly some of this disparity was attributable to the timing of the bargaining cycle: the CWA contract was completed in the midst of the financial crisis. The City settled with AFSCME before the recession hit. Tp159.

Forces that pre-dated the worldwide economic contraction put additional downward pressure on CWA members' compensation. The 2005-2008 cba contained a provision that reduced Appendix A pay scale movement by 1% less than the negotiated PBIs. Union Ex11, Tp 157. When the Union negotiated a 3% PBI in the second year of the 2005-2008 cba, the pay structure only increased by 2% that same year. This provision was retained in the 2008-2011 and 2011-2014 cbas. Tp 157-159; Union Ex14,15. Employees supervised by CWA members were not subject to a similar provision. The effect of the 1% reduction rule on CWA members was depressed base wages relative to the employees they supervised. This contributed to wage or salary "compression."

From 2005 through 2017, CWA members received base wage increases that were 2.75% less than those received by the employees they supervised. Union Ex39 p20. More than a decade of the 1% reduction rule meant that CWA members at the top of the pay scale continued to fall behind. That is because annual merit pay increases under Section 17.1(G) of successive cbas (a unique feature of the CWA cba) must be paid to employees at the top of the pay scale in a lump sum rather than as an increase to their

base wage in accordance with Step X provision described in Section 17.1(B), generally, and Section 17.1(B)(3) specifically. Tp162. As a result of lower PBIs in 2008 and 10 years of the 1% reduction rule, approximately 160 CWA members were receiving a base wage/salary below that of employees under their supervision when negotiations over the 2014-2017 cba began. Tp160-164.

CWA members started to improve their position in the 2014-2017 cba. The Union secured a 3% PBI increase in each year of the cba. Jt Ex 1. The Union also successfully bargained for the elimination of the 1% reduction rule. Jt Ex 1.

Significantly the Union and the City entered into an agreement known as Side Letter No. 17 directly addressing the issue of wage compression. Per the Side Letter, the pay chart moved 3% on April 16, 2015 in addition to the PBIs. Jt Ex 1; Tp 155-157.

As a result of gains made in the 2014-2017 cba the number of employees in Step X (employees whose merit pay increases are paid in a lump sum because they are at the top of scale) has been reduced to approximately 30 members because merit increases went to affected employees' base. Tp163. The systemic problem of wage compression was addressed in a significant and effective manner under the current cba.

The City proposed PBIs of 1.5%, 1.5% and 1.5%. In contrast, employees supervised by CWA members received increases of 3%, 3%, and 2% in their recent 2017-2020 Agreement. Union Ex16. The City's proposal would wipe out the gains CWA members made under the current cba relative to catching up to other City employees and recreate the conditions for wage compression.

As the City proposed comparably low wage increases for CWA members, it likewise rejected the Union's proposal to renew Side Letter No. 17 for an additional, one-time 3% increase to the pay structure in the second year of the successor cba.

The City does not claim an inability to pay CWA's proposed PBIs. Tp 26. Instead the City stated its wage proposal "is fair and within the market." Tp 27. The City claimed that the midpoint or "market rate" of the CWA "grade range" pay scale -the basis for the other four specified rates in each row of the pay structure-should reflect market conditions. Tp 244, 257-258. The City claimed that the Union's PBI proposal should be rejected on the grounds that "it affects [the pay scale] greatly because the market rate

that's established already is adjusted and should be adjusted every year by a certain percentage." Tp 244.

The City was "unaware of any mechanism" other than collective bargaining "by which these parties agreed to wholesale adjustments to the pay structure" in CWA's cbas Tp 259. The City was unable to identify a single instance where it approached the Union regarding a mid-term, annual increase to the pay structure. Tp 255-259.

If the City's wage proposal of 1.5%, 1.5% and 1.5% is adopted on the heels of the employees CWA members supervise receiving PBIs of 3%, 3% and 2%, more wage compression will likely occur. In the absence of the Union's proposed Side Letter No. 17 the problem of lack of separation between the wages of the supervisors and those supervised will be exacerbated. This result is neither equitable, workable or in the City's interests in maintaining parity and effective compensation principles.

Analysis

The Union's PBI proposal-*except as to its third year bump to 3.25%*- is reasonable, affordable, consistent with trends and recent historic adjustments and responsive to the problem of wage compression. It is justified by the past economic sacrifices of CWA members. There is significant support in the record for this recommendation.

- The wages of CWA members have not kept pace with the increases received over the past several bargaining cycles with its internal comparables. The problem becomes immediately apparent when comparisons are made between CWA incumbents and AFSCME members. Since AFSCME members received 3-3-2%, to give CWA less than the employees it commonly supervises creates obvious problems of management, morale and the perception of fairness.
- The City has not argued inability to pay. The City's financial condition is solid and secure. Conditions that gave rise to the EAC are distant relics of the past.
- The "paper" availability of merit increases has not demonstrably resulted in any significant wage adjustment for employees. Although the possibility exists that certain employees may receive and in fact received on various dates/times such adjustments do nothing for the bulk of the unit. Merit increases are a subjective assessment and will not and are not intended to serve as a means and method of income equality or annual pay adjustments to keep pace with cost of living and inflation. Merit increases also do nothing to enhance the desirability of a work location in a job competitive environment.

- The City's claims of merit increases and market adjustments were insufficiently supported by evidence in the record. The best that can be stated is that the language regarding market adjustments has been ignored.
- External comparables indicate the City's proposed wage adjustments were on the lower end of settlements/increases granted.
- The Union presented insufficient support for the 3.25% jump in year 3 of the cba.
- The parties' long-standing practice absent exigent economic circumstances is to follow a uniform increase during the life of the cba.
- SERB statistics and Bloomberg sources support increases higher than those proposed by the City.
- The Union secured a 3% PBI increase in each year of the expiring cba which indicates that the amount of increase sought is consistent with the most recent bargaining patterns.
- Review of the other recommendations contained herein will demonstrate a balance between competing demands and interests. Stated differently, the Union's requests for additional benefits in some areas were denied or modified as a reflection of the FF attempt to follow the statute. The adjustment of wages provides a sure means not subject to vagaries or uncertainties of allowing a hedge against increased inflation and health care costs.
- City gains in the areas of health insurance and OPERS pick up reductions create an adverse impact on take home pay which is somewhat ameliorated by the adjustments recommended.

RECOMMENDATION

The FF recommends the following language: [Unless set forth below, all other language in Article 17.1 remains as per the current cba]⁵

Article 17-Salaries and Compensation

Section 17.1. Base Pay and Merit Increases

- (A) As the result of a labor/management partnership, the parties developed a new pay plan effective December 5, 2004. The CWA pay plan is based on the pay structure and classification assignments to pay grades as set forth in Appendices A and B.⁶**

⁵ The FF was presented with various "housekeeping" and language clean-ups by both parties during the session held on August 30, 2017. Hearing no opposition, these various language clean-ups are incorporated at various points in the Recommendations. Herein, the City proposed clarifying language for Article 17.1 (D) and a minor edit for (H) without comment by the Union. The changes are reflected herein.

⁶ Paragraph A is current language, recited here for context.

A three percent (3%) percentage base increase (PBI) will be effective the pay period including April 24, 2017; a three (3%) PBI will be effective the pay period including April 24, 2018; and a three (3 %) PBI will be effective the pay period including April 24, 2019.

- ...
- (D) Retroactive pay adjustments, for any PBIs referenced in Section 17.1(A), shall be limited to straight-time (any time paid by the City, i.e., vacation, sick, injury, holiday, compensatory time, approved union release, and time worked out-of-class); overtime; and reciprocity hours only. Any retroactive pay increase shall be limited to those employees in the bargaining unit as of the effective date of the PBI who continue to be employed by the City upon acceptance of this Agreement by City Council. Effective with the acceptance of this Agreement by City Council, those employees who have entered the bargaining unit after the effective date of any PBI and the pay period in which any initial retroactive adjustments are paid shall be eligible for retroactive pay from the date that the employee entered the bargaining unit.

- ...
- (H) A merit increase must be given no later than the first day of the first pay period following the 90th day after the employee's classification seniority date. Any merit increase processed after that date will be retroactive to said date.

Any merit increase will be retroactive to the first day of the first pay period following the employee's classification seniority date.

Side Letter 17 – Pay Scale Adjustment

City Position

An additional adjustment to CWA's pay plan will disturb the City's pay structure for CWA employees. Unlike an AFSCME employee who is paid a non-discretionary rate based on length of service or "step" obtained, CWA utilizes a discretionary grade-range pay plan that is based on market rate. Tp 243:20-244:24. A grade-range pay plan relies upon a midpoint to represent the market rate for a particular job. Tp 244:8-16. Additional adjustments that overprice and overvalue all of the jobs disrupt that pay structure. Tp 246:5-8.

Moving CWA's pay scale would not resolve any perceived wage compression vis a vis AFSCME. AFSCME employees are paid at a step progression without any ability to adjust by discretion. CWA employees by contrast may be paid a discretionary level between the minimum and maximum. Tp 243:20-14; 244:8-24. Since CWA employees do not fall into a specific step, there is no guarantee that every employee will receive the raise. Nor does it specifically target those employees affected by claimed wage compression.

The primary mechanism for dealing with pay inequities and wage compression is an Article 17.9 wage adjustment. Tp 250:7-22. Side Letter 15 states that the appropriate method for addressing wage compression is through Article 17.9 wage increases. Side Letter 15 also states that wage compression may also be considered when determining a 17.2(G) merit increase. The parties' existing internal process for evaluating wage compression is via Article 17.9 wage adjustments and Article 17.2(G) merit increases. No further language is required.

Union Position

Pay scale adjustment is necessary to prevent wage compression with AFSCME 1632 employees whom CWA employees supervise. Tp 156:6-14; Union Ex 39, slide 22.

At the hearing the City disputed the accuracy of the Union's claims concerning the importance of renewing Side Letter #17 and the magnitude of the compression problem. Tp 249. The City refused to provide the Union with requested data that would have quantified the compression problem between CWA supervisors and their subordinates in the absence of renewing the Side Letter No. 17. Union Ex 36, Union Ex 39, p 22, Tp 164-165. Nor did the City offer any data to refute the Union's concerns about the re-emergence of wage compression. The record evidence supports the need for Side Letter No. 17.

Analysis

The Union's Side Letter #17 proposal is fair, reasonable, affordable and responsive to the problem of wage compression and further justified by the past sacrifices of CWA members. The City argued that the proposed adjustment is unwarranted as the extant model takes into account market conditions and reviews on a regular basis by the City's Compensation Managers.

The FF was singularly uninformed as to the reality of that City claim. There was no testimony that market studies are done on any type of predictable basis. No recent market studies by City staff were introduced. There was no evidence that there had been any sort of attempt by the City to analyze or research the mid-points of the pay scale or do any comparisons with any other jurisdictions. There was a decided lack of support for the City argument that the pay scale was reflective of outside market forces and an organic document. It became patent that the only way CWA members might see a market rate adjustment was through bargaining, not through independent City efforts, studies or compensation studies. The conclusion reached by the FF was that the bargaining table was the sole real-time recourse for the unit to receive the pay scale adjustments supported by market conditions, equity and comparables. A 3% pay scale adjustment—once-during the bargaining cycle is appropriate and consistent with the parties' bargaining history. Since historical precedent points to the adjustment occurring in year 2 of the bargaining agreement, such is the recommendation herein.

RECOMMENDATION

The extant Side Letter #17 needs date changes; names of parties changed, signatories reflective of the current bargaining cycle representatives and dates and amounts changed as well. Below is the proposed language for Side Letter #17:

SUBJECT: Appendix A Pay Plan

This letter is to document the parties' agreement regarding an adjustment to the pay structures outlined in Appendix A.

For the pay structure effective the pay period including April 23, 2018, the parties agree that the pay structure will increase three percent (3%) in addition to the standard pay structure movement that occurs with the annual PBI.

Article 17.2 – Employees Contribution to OPERS

City Position

The City proposed to reduce its contribution to the employee share of pension contributions to OPERS (pension pick-up).⁷ This proposal conforms to the EAC's recommendations and all of the City's cbas since 2010. The City proposed the following pension pick-up contributions for current employees:

1% contribution effective as soon as practicable after acceptance of this contract by City Council;

0% contribution effective April 1, 2018.

The City further proposes that new employees continue to pay the entire employee share of their pension contributions. CWA members who have been hired since July 24, 2011 have been responsible for the entire employee PERS contribution since date of hire.

Internal comparables support the City's proposal as demonstrated below.

AFSCME 1632 began phasing out pension pick-up for existing employees as indicated:

9% in 2011;
8% in 2012;
7% in 2013;
6% in 2014;
5% in 2015;
4% in 2016;
2% in 2017;
0% in 2018.

City Wages Tab 1⁸; See also, Article 26.2 of Union Ex. 2, 3, 16.

AFSCME 2191 followed the same pattern beginning in 2011:

9% in 2011;
8% in 2012;
7% in 2013;

⁷The phase out of pension pick-up will only affect the employee's share. The City will continue to contribute its statutorily required 14% employer share to the pension systems for CWA, AFSCME 1632, AFSCME 2191, FOP/OLC and MCP. This result is dictated by statute. The safety forces have a different formula for employer contributions and each safety force is in a different pension plan.

⁸ At the hearing the City amended its City's Wages Tab 1 exhibit to reflect its proposal as described above. Tp 41:4-42:18.

6% in 2014;
5% in 2015;
4% in 2016;
2% in 2017;
0% in 2018.

City Wages Tab 1; See *also*, Article 26.2 of Union Ex. 6, 7.

MCP's pension pick-up has been steadily phased out since 2010. The pickup for MCP employees hired before January 1, 2010 has been phased out by 1% per year beginning in 2010. By 2019, the pickup for MCP employees will be eliminated. Employees hired after January 1, 2010 receive no pension pickup. City Introductory Materials Tab 5, p4. MCP's pension pick-up will be phased out in 2019 per below:

4% in 2015
3% in 2016
2% in 2017
1% in 2018
0% in 2019

City Wages Tab 1; See *also*, Union Ex. 30, p. 12.

FOP/OLC is similarly situated. FOP/OLC reduced its pension pick-up from 10% in 2010 to 7% in 2012. City Introductory Materials Tab 5 p4. FOP/OLC will also be phased out completely in 2019 per below:

6% in 2013;
5% in 2014;
4% in 2015;
3% in 2016;
2% in 2017
1% in 2018
0% in 2019

City Wages Tab 1; See *Also*, Article 14.4 Union Ex. 21 and 12.⁹

The City and IAFF phased out and eliminated pension pick-up in October 2014. City Introductory Materials Tab 5.

⁹ FOP also agreed to phase out pension pick-up from 5.5% in 2010 to 1.5% in 2016. FOP and the City are currently in negotiations for a successor agreement with the 2014-2107 agreement to expire on December 8, 2017.

Union Position

The Union proposed an end to pension pick-up reductions. The Union has proposed maintaining the City's 2% pension pick-up for employees hired before July 24, 2011. The Union views this proposal as a further reduction in its wages. It resists wage reduction and the downward pull reflected by the City's proposal.

The Union proposed no change for the CWA members hired after July 24, 2011. Those employees have never received pension pick-up from the City and therefore have had no expectation of continuation of an established benefit.

Analysis

The City's proposal is consistent with the established history between the City and all its employees. The record demonstrates the parties' prior established commitment to phasing out the pension pick-up. The City began phasing out pension pick-up with all bargaining units in 2010.

Prior to June 1, 2010 the City paid the entire 10% of its CWA employees' share of OPERS contributions. Union Ex14. For the past seven years the parties agreed to reduce the City's responsibility for the employee share of pension contributions by 1% annually. The Union position is not supported in view of the clear trend of the internal comparables.

CWA presented no compelling evidence to support its unique position. Recommending its position would be unjustifiably anomalous and a break with the established pattern.

The Union proposal would also perpetuate the distinction between its more senior employees and those hired post July 2011. All other City employees hired post July 2011 regardless of unit status receive no City pension pick up of the employee OPERS share. The Union has no quarrel with this provision.

The Union provided insufficient justification as to why now completing the phase-out of the pension pick-up is inappropriate. Internal comparables and bargaining history support the recommendation. The City met its burden of showing the need for pension

pick up elimination. The Union failed to persuade that this benefit-alone among its peers- needed to remain in the cba.

The City’s proposal is recommended as per below:

RECOMMENDATION:

Section 17.2. Employee’s Contribution to OPERS [language change in (B); housekeeping changes in (D) and (F); all other language per current cba]

(B) Salary Reduction Employer Pick up means the employee pays the retirement contributions and the employee’s contributions are tax deferred. Fringe Benefit Employer Pick up means the employer pays the retirement contributions. Both types of pick –up are used in this Section 17.2(B)

<u>Effective Date</u>	<u>Fringe Benefit</u>	<u>Salary Reduction</u>
Effective as soon as practicable after acceptance of this contract by City Council	1%	9%
April 1, 2018	0%	10%

...

(D) The provisions of Section 17.2 shall not apply to any employee hired (first day of employment) by the City on or after July 24, 2011 into a classification in the bargaining unit; and such employee shall be responsible for paying the full employee contribution to the Ohio Public Employees Retirement System. Transfers within the City and employment status changes (without a break in service) are exceptions to this provision. This contribution is a salary reduction employer pick –up and is tax deferred.

...

(F) If at any time, the Ohio Public Employees Retirement System increases the employee contribution to an amount greater than ten percent (10%), the employees’ obligation (Salary Reduction Employer Pickup) shall be increased accordingly with no further requirement to adjust employees’ compensation.

The sum paid hereunder by the City on behalf of an employee is not to be considered additional salary or wages and shall not be treated as increased compensation. For purposes of computing the employee’s earnings or basis of his/her contribution to the Ohio Public Employees Retirement System, the amount paid by the City on behalf of an employee as a portion of his/her statutory obligation is intended to be and shall be considered as having been paid by the employee in fulfillment of his/her statutory obligation.

Article 17.4 – Working Out of Classification

City Position

Based on the types of jobs performed and the general make-up of the bargaining unit current language requiring 8 hours of working at the higher classification to earn that classification's pay is appropriate.

The Union has not established a need to change the current cba language. The CWA unit consists of supervisors, managers and technical and professional employees across all divisions and departments of the City. These employees' job duties are not easily distinguishable from those in the classifications immediately above and below their own. Tp 178:16-23.

The Union has not demonstrated an operational reason for its proposal. At the hearing the Union pointed as its only argument to the City's internal comparables.

Union Position

In Section 17.4 the Union proposed to align the working out of classification provision in its current cba with the provisions found in some of the other City cbas. Union Ex 39 p25.

Regardless of what the other cbas provide, the Union's proposal is fair and more equitable than the status quo. The current provision requires a CWA bargaining unit member to work an entire day in a higher paid classification in order to receive the higher rate of pay. The Union proposal re-sets the threshold for higher compensation at the completion of at least 4 hours of work in the higher paid classification.

Under the status quo 1 hour less than a full day worked at a higher classification and the assigned employee receives no additional compensation. This unfair result occurs despite providing work and services that would in the normal course pay an incumbent employee more money. The current provision thus results in a windfall to the City at the expense of CWA members. By contrast the Union's proposal is consistent with other City bargaining units and terms applicable to the MCP.

The City does not claim an inability to pay or that the Union's proposal interferes with operations. Rather the City suggested that it is more difficult to distinguish between the work of two CWA classifications compared to a non-supervisory employee temporarily

performing work in a supervisor position in another bargaining unit. Tp 178-179. This is not a real barrier and the City did not develop examples of this alleged problem.

Analysis

The Union position is supported by considerations of equity, fairness and reasonableness. The City created the various job classifications and is charged with understanding the differences. Its argument that the distinctions are too close making the assignments challenging to pinpoint entitlement rings hollow.

Working four hours-a half day-at a higher job classification is sufficient time spent at a higher rate to support a plus rate adjustment. It allows the City to make assignments with the knowledge that a short assist in a higher classification may be necessary for occasional purposes and operational needs. But the idea that an employee should be assigned to spend the greater part of his/her workday doing the job of a higher paid position without fair and appropriate compensation is not acceptable. Nor is it consistent with well-established labor principles –and indeed civil service principles- that a particular job carries a particular rate of pay. A half day or more working a higher level job merits appropriate compensation.

RECOMMENDATION

Section 17.4. Working Out of Classification.

Employees in full-time non-seasonal job classifications as listed in Appendix B who are temporarily assigned by a designated management representative the duties of a classification assigned a higher wage rate, will be paid four percent (4%) above the employee's current rate for each hour worked in the higher class upon completing at least at least four (4) hours of a workday in the higher class. Working out of class assignments are not to be used in lieu of seeking approval for filling a vacant position, nor shall it be used for the sole purpose of paying an employee at a higher class in circumvention of the requirements set forth by the Civil Service Commission.

Article 17.5. Shift Differential

The City proposed housekeeping language changes to conform with a more fluent reading of the cba language. The proposed language changes were not opposed by the Union. The desired changes are reflected below.

RECOMMENDATION

The FF recommends the following language changes be made to paragraph (C) only of this section of the current cba. [all other language remains as per the current cba]:

Article 17.5. Shift Differential

(C) ...

Those employees whose regularly assigned shift is a rotating shift shall be paid a shift differential of sixty cents (\$.60) per hour over the regular hourly rate for all hours worked regardless of shift. Effective with the acceptance of this contract by City Council, those employees whose regularly assigned shift is a rotating shift shall be paid a shift differential of seventy cents (\$.70) per hour over the regular hourly rate for all hours worked regardless of shift. A rotating shift is a permanent shift that is comprised of a regularly scheduled assignment on First, Second and Third shifts or any variation thereof.

...

Article 17.6 Service Credit

City Position

The City proposed increasing the annual service credit payment by \$50. The City's proposal is fair and equitable. It will provide an additional benefit to its most tenured employees. The City's proposed increase is identical to the increases received by AFSCME 1632, AFSCME 2191 and FOP/OLC. Union Ex 6, Tp 66; Ex 12, p33; Ex 16, p77. The service credit payment schedules for AFSCME 1632 and AFSCME 2191 were identical to the CWA schedule before the negotiated changes for the 2017-2020 contracts with those units. The City's proposal to increase the service credit payments for CWA by \$50 would maintain consistency between the indicated units. Union Ex 6, p66; 16, p 77. The total cost of the Union's proposal over the life of the contract of is over \$781,000; nearly \$600,000 more than the cost of City's proposed increase. City Wages Tab 4.

Union Position

A CWA employee with more than five years of service receives an annual service credit of \$600 under current language. Under the Union's proposal employees would receive an additional \$200 for a total of \$800.

Service credit should be indexed for inflation. Its proposed increase represents an effort to make up for the buying power lost by the Union since its last service credit increase. Tp167:4-16; Union Ex 39 slide 26.

The Union established that the current longevity payments have not been increased since the 2005 CBA. Union Ex 39 p26. Inflation eroded the buying power of the longevity payments in the current cba. \$1,000.00 in April 2005 (the highest payment in the current cba) has the same buying power as \$1,257.89 in July 2017. Given the strong financial condition of the City, partial restoration to the buying power of longevity payments rewards CWA members for public service in 2017 dollars.

Analysis

Service credit is a bonus to reward and incentivize the City's long-tenured employees. The Union has failed to present compelling evidence that service credit is tied to wages or that past increases were justified based on inflation or external economic factors. Internal and external comparables do not support the Union's proposal. The Union will if this report and recommendation is accepted achieve pay adjustments and salary increases designed to bring parity and economic support to the unit. Not every desired improvement in salary and fringe benefits is equally weighted. The FF concludes that a modest adjustment upward as proposed by the City based upon the current graduated scheme serves a purpose consistent with the other benefits and language proposed herein and is aligned with comparables as well.

The FF supports the adjustment proposed by the City as equitable and prudent. The FF recommends the City's proposed increases of \$50/level be adopted.

RECOMMENDATION

Section 17.6 Service Credit

...

The following service credit schedule shall be used for all eligible bargaining unit employees.

Service Credit Payment Schedule

More than 5 years of continuous service	\$650
More than 8 years of continuous service	\$750
More than 14 years of continuous service	\$850
More than 20 years of continuous service	\$950

More than 25 years of continuous service

\$1050

ISSUE 4 Article 18 – Insurance and Benefits

Article 18.1 Plan design

City Position

The City proposed plan design changes that are comparable to both internal and external comparables. The City proposed increases to medical plan deductibles, medical co-payments and prescription co-payments. The Union conditionally accepted all of the City's health care plan changes for existing employees.

AFSCME 1632, AFSCME 2191 and FOP/OLC agreed to nearly identical plan design changes as proposed herein. City Insurance Tab 1.

The City will likewise implement nearly identical plan design changes for MCP. These plan design changes are similar to the City's proposals to CWA for deductibles, coinsurance, out of pocket maximums and prescription coverage. City Insurance Tab 1.

The City proposed a \$300 annual single deductible and a \$600 family deductible. The proposed deductibles are less than the majority of deductibles statewide. SERB's 2017 Cost of Health Insurance Survey found that over 61% of single plans have a deductible of greater than \$500. City Insurance Tab 5, p18. Over 61% of family plans had a deductible of over \$900. City Insurance Tab 5 p18. Proposed out-of-network changes are designed to encourage employees to use in-network providers.

The City is maintaining its "rich" plan. Tp 55:13-14. The "richness" of a plan is determined by the actuarial value – the higher the actuarial value, the richer the plan. Tp 55:14-20. The actuarial value of a plan depends on the "allowed costs that the plan benefits will pay as opposed to the amount employees will pay via copays, deductibles" and other costs and factors. Tp 55:15-19.

A typical plan has an actuarial value of between 75% and 85%. Tp 56:10-11. The current CWA plan has an actuarial value of 95.9%. Tp 56:6-7. The proposed plan would have an actuarial value of 94.3%-- a 1.6% negative change. Tp 56:20-21. The City's plan design changes are not going to have a significant impact on employees' ability to receive the expected and usual care experienced to date. The proposed changes are designed to align the plan more closely with comparables.

Union Position

The Union conditionally accepted the City's proposed premium contribution rates for current employees and agreed to the City's proposed premium contribution rates for existing employees.¹⁰ The Union conditioned its acceptance of the City's plan design changes on receiving one of the two following premium contribution options:

Option 1: The continued use of the retrospective funding analysis; *or*

Option 2: The actuarial funding rate but only then if there are caps on the dollar amounts an employee may be required to pay in any given year of the contract.

If neither option is selected the Union proposed to maintain the existing plan design features with only minor changes as set forth in its fact-finding proposal.

Bargaining unit employees will pay more for health care under the proposed plan design changes. The increased costs take multiple forms: higher deductibles, higher out of pocket maximums for network, a new out of network charge, increased primary care and specialist office visit co-pays and higher prescription drug charges. Union Ex 37.

Union witness Marianne Steger is an expert in the field of health insurance benefits. Tp 181-184. She determined that a bargaining unit employee unit enrolled in family coverage (68% of the unit currently receives family coverage) could spend an additional \$805.00 annually before any increases in their contributions to insurance premiums based on conservative usage assumptions for a four person household. Union Ex 37; Tp 189-201. At the hearing she indicated she should revise upwards the projected calculations, so the anticipated employee costs would be higher still.

The Union recognizes that insurance costs will continue to increase for reasons beyond its members' control. To some extent costs are beyond the City's control as well. Therefore the Union conditionally agreed to the plan design changes described in the City's proposal. Steger testified that the conditional plan design changes are consistent with a "collaborative" approach to health insurance benefits for employees.

¹⁰ Section 18.1(A)(3) of the Union's proposal contained a typographical error. The "six hundred dollars (\$600.00)" annual deductible should be changed to "eight hundred dollars (\$800.00)." Tp 226.

Tp 185.¹¹ The Union has a significant interest in protecting its members from effects of runaway insurance premiums.

Analysis

The parties acknowledge that rising costs plague any discussion of benefits and plans for health insurance. Additionally, the parties are dealing with an unstable health care environment on the national level and in the marketplace itself. They seek to provide predictability and stability for its workforce with little of either quality being available in the marketplace. Although the retrospective funding analysis may have served the parties well, it is not the trend and not the best practices means of determining future health care costs. The Union's recognition of the fact its current practice is a minority view helped the FF make the below recommendation.

The increased costs to be borne by the members in terms of deductibles and co-pays while real are not dramatic and unduly onerous. Any increase will not be welcomed by any employees. But those living in the world of employer paid health insurance bear a responsibility to partner and participate in the management of expenses.

The measures discussed by Steger appear to be in some part absorbed into the new plan language proposed by the City. On the whole, the plan design changes offer the fundamentals of what a plan needs: stability, predictability and clear statements of costs and responsibility for those costs. Because the costs unfortunately cannot be locked in for a three-year cycle, the imposition of caps is a potential landmine for the City's budget. Historical usage rates, trends, wellness initiatives, drug costs management and other traditional cost containment means will determine the rise if any in future premiums.

¹¹ The Union's proposed Section 18.1(D)(1) adds the word "lenticular" to the first bullet point under Prescription Glass Co-Pay. Lenticular lenses are referenced under Non-Network benefits in Section 18.1(D)(1), but not Network benefits under Section 18.1(D)(1). The omission in the current contract is a typographical error.

On the record as a whole, based upon comparables and noting the grudging acceptance of the Union that compromises are needed to ensure continued viability of the plan the FF recommends the below language.

RECOMMENDATION

Section 18.1. Health and Hospitalization, Prescription Drug, Disability, Dental and Vision Coverage.

The City shall continue to make available to eligible full-time non-retired employees and their eligible dependents substantially similar group health and hospitalization insurance, prescription drug, disability, dental and vision coverage and benefits as existed immediately prior to the signing of this Agreement, except as follows:

(A) **Comprehensive Major Medical.** The City shall maintain preferred provider organization(s) (PPO) for both medical and prescription drug services.

(1) A two hundred dollar (\$200.00) annual single, deductible with an eighty/twenty percent (80/20%) coinsurance of the next fifteen hundred dollars (\$1,500.00) in reasonable charges or three hundred dollars (\$300.00), for a total out-of-pocket maximum of five hundred dollars (\$500.00) per single contract per year.

Effective January 1, 2018, a three hundred dollar (\$300.00) annual single deductible with an eighty/twenty percent (80/20%) coinsurance of the next two thousand dollars (\$2,000.00) in reasonable charges or four hundred dollars (\$400.00), for a total out-of-pocket maximum of seven hundred dollars (\$700.00) per single contract per year.

(2) A four hundred dollar (\$400.00) annual family deductible with an eighty/twenty percent (80/20%) coinsurance of the next two thousand dollars (\$2,000.00) of reasonable charges or four hundred dollars (\$400.00), for a total out-of-pocket maximum of eight hundred dollars (\$800.00) per family contract per year.

Effective January 1, 2018, a six hundred dollar (\$600.00) annual family deductible with an eighty/twenty percent (80/20%) coinsurance of the next three thousand dollars (\$3,000.00) of reasonable charges or six hundred dollars (\$600.00), for a total out-of-pocket maximum of one thousand two hundred dollars (\$1,200.00) per family contract per year.

(3) If an employee and/or an eligible dependent receive services from a preferred provider (PPO), reimbursements will be paid at

the current coinsurance rate of eighty/twenty percent (80/20) percent of reasonable charges. If preferred providers are not used, coinsurance will reduce to sixty/forty percent (60/40%) percent of reasonable charges. The additional twenty percent (20%) coinsurance will be the employee's responsibility and is not counted toward the deductible or out-of-pocket maximum.

Effective January 1, 2018, if an in-network provider is not used, coinsurance will reduce to sixty/forty percent (60/40%) of one hundred forty percent (140%) of the published reimbursement rates allowed by Medicare; the annual deductible will be increased to eight hundred dollars (\$800.00) per single contract per year and one thousand six hundred dollars (\$1,600.00) per family contract per year; and the out-of-pocket maximum will be increased to one thousand six hundred dollars (\$1,600.00) per single contract per year and three thousand two hundred dollars (\$3,200.00) per family contract per year. Any network modifications made by the plan administrator will apply.

- (4) Physical therapy, occupational therapy and/or chiropractic visits will be covered up to a combined annual maximum of thirty (30) visits per person, based upon medical necessity.
- (6) Physician office visits will be subject to a fifteen dollar (\$15.00) co-payment per in-network primary care physician visit (includes Family, General, Internal, Pediatrician, mental health and OB/GYN physicians). Eligible services, which shall include diagnostic, surgical and/or specialty services, routine prostate/colon rectal cancer tests subject to the limits provided in the network physician's office and billed by that office shall be covered at one hundred percent (100%) after office visit co-payment. Effective January 1, 2018 the co-pay for in-network primary care physician office visits will be twenty dollars (\$20.00) per visit.

A Specialty care physician office visit will be subject to a twenty-five (\$25.00) co-payment per in-network specialist visit. Eligible services, which shall include diagnostic, surgical and/or specialty services, routine prostate/colon rectal cancer tests subject to the limits specified in the paragraph above provided in the network physician's office and billed by that office shall be covered at one hundred percent (100%) after office visit co-payment. Effective January 1, 2018, the co-pay for specialty care physician office visits will be thirty dollars (\$30.00) per visit.

The co-payment does not apply to the annual deductible and coinsurance; however, office co-payments will apply to the annual out-of-pocket maximum. The annual medical plan deductible will not apply to office visit charges for which the office co-payment applies.

Preventive care services, as defined and updated under the Affordable Care Act (“ACA”), will be provided by doctors and health care professionals within the City’s plan provider network without cost-sharing (copayments, coinsurance and deductibles).

Preventive services that are not originally defined or eventually included in the ACA shall be subject to the annual deductible, co-insurance, and out-of-pocket maximum as specified in Section 18.1 (A)(1), (2), (3) and (4).

Preventive services rendered by non-network providers shall be subject to the annual deductible, co-insurance, and out-of-pocket maximum for non-network providers as specified in Section 18.1 (A)(1), (2), (3) and (4).

Insured members should contact the City’s health plan administrator prior to obtaining preventive services for determination of preventive services coverage.

In addition to the preventive services provided for under the ACA, the City shall maintain preventive coverage and limits for the following services:

- (a) provide coverage for an annual (one (1) per calendar year) routine prostate/colon rectal cancer tests for men age 40 and over up to a maximum of eighty-five dollars (\$85.00).
 - (b) for men age 40 and over, an annual (one per calendar year) PSA blood test will be covered up to a maximum of one hundred dollars (\$100.00).
 - (c) provide coverage for one (1) baseline mammogram for women 35-39 years old.
- (7) Up to a two hundred dollar (\$200.00) life-time maximum will continue to be paid for temporomandibular joint pain dysfunction, syndrome or disease or any related conditions collectively referred to as TMJ or TMD on the basis of medical necessity.

The City reserves the right to change or offer alternative insurance carriers or to self-insure as it deems appropriate.

(B) Prescription Drugs

- (1) If an employee and/or eligible dependent receives prescription drugs at a participating PPO pharmacy, the employee shall be responsible for a five dollar (\$5.00) co-pay for a generic drug. If there is no generic drug equivalent for the prescribed drug, the co-pay is ten dollars (\$10.00). If the prescription is for a brand-name drug, or the prescription is written "dispense as written" and a generic equivalent exists, the co-pay is twenty-five dollars (\$25.00). If participating pharmacies are not used, additional ten dollar (\$10.00) co-pay shall be imposed.

Effective January 1, 2018, the employee shall be responsible for a five dollar (\$5.00) co-pay for a Tier 1 drug. For a Tier 2 drug, the co-pay is fifteen dollars (\$15.00). For a Tier 3 drug or if the prescription is written "dispense as written" and a lower tier drug exists, the co-pay is thirty dollars (\$30.00). The annual out-of-pocket maximum per single contract per year will be two thousand dollars (\$2,000.00); the annual out-of-pocket maximum per family contract per year will be four thousand dollars (\$4,000.00).

- (2) Mail order prescription drugs will be limited to a thirty (30) day minimum and a ninety (90) day maximum supply. Under the mail order program, the employee shall be responsible for ten dollars (\$10.00) co-pay for a generic drug. If there is no generic drug equivalent for the prescribed drug, the co-pay is twenty dollars (\$20.00). If the prescription is for a brand-name drug, or the prescription is written "dispense as written" and a generic equivalent exists, the co-pay is fifty dollars (\$50.00). Maintenance drugs may be obtained through the mail order program, if such maintenance drugs are available through the mail order program.

Effective January 1, 2018, the supply limits described above will remain the same; the out-of-pocket maximums for prescription drugs fulfilled through mail order will remain the same as described in Section 18.1(B) above. Under the mail order program, the employee shall be responsible for a twelve dollar and fifty cent (\$12.50) co-pay for a Tier 1 drug. For a Tier 2 drug, the co-pay is twenty-five dollars (\$25.00). If the prescription is for a Tier 3 drug or if the prescription is written "dispense as

written" and a lower tier drug exists, the co-pay is sixty dollars (\$60.00).

- (3) Effective January 1, 2018, the City will provide a prescription drug coverage plan that provides for the use of a formulary and prior authorization requirements for certain types of drugs; and some drugs will require the employee and/or dependent to undergo step therapy (trial of a lower cost drug before a higher-cost drug is covered). The prescription drug program administrator will determine which drugs require prior authorization and/or step therapy. After the formulary takes effect, the City's obligation to provide substantially similar prescription drug benefits and coverages under Article 18.1 applies to the formulary.
- (4) Control Drug Management Program. Effective January 1, 2018, the City's prescription drug program administrator will review prescriptions to assess whether abuse of narcotics and similar drugs may be occurring and will follow up with only the prescribing physicians as appropriate to further evaluate suspected instances of abuse.

(C) Dental Insurance

- (1) A voluntary dental PPO shall be available to members which allow voluntary selection of a participating provider which will result in no balance billing over reasonable charges. All existing coinsurance levels and exclusions continue to apply.
- (2) All other provisions of the dental insurance coverage shall remain the same as under the last Agreement between CWA and the City.

(D) Schedule of Vision Insurance Benefits

- (1) In-network provider benefits:
 - Professional Services
 - Examination co-pay \$5.00
 - Materials:
 - Prescription glasses co-pay \$12.50
 - Includes single vision, bifocal, lenticular or trifocal lenses
 - Lens enhancements are an extra cost to member and not included in the co-pay.
 - Retail frame allowance \$135.00
 - Contact Lenses - necessary \$195.00
 - Contact Lenses - cosmetic \$115.00

(2) **Non-network provider reimbursement schedule:**

Professional Fees	
Examination up to	\$35.00
Materials	
Single Vision Lenses, up to	\$35.00
Bifocal Lenses, up to	\$50.00
Trifocal Lenses, up to	\$60.00
Lenticular Lenses, up to	\$90.00
Contact Lenses - necessary	\$170.00
Contact Lenses - cosmetic	\$90.00
Frames, up to	\$35.00

- (E) **Eligibility for Dental and Vision Insurance.** Employees shall become eligible for dental and vision benefits on the first of the month following the date upon which they complete ninety (90) days of continuous City service.

Article 18.1 (F)

The parties agreed to an additional hearing aid benefit consistent with AFSCME bargaining unit employees in Article 18.1(F). Each party requested that the FF recommend the hearing aid benefit as worded by the Union.

RECOMMENDATION¹²

The FF recommends the parties adopt the below language in Article 18.1:

- (F) **The parties will execute a Letter of Agreement prior to the effective date of the Agreement obligating the City to provide hearing aid benefits to CWA bargaining unit employees through the Ohio AFSCME Care Plan on the same basis that City funds and provides benefits for employees represented by AFSCME Local 1632.**

Article 18.2 – Insurance Premium Contribution

City Position

The City proposes an increase to the employee monthly premium contribution rates that is consistent with its other City bargaining units and public sector trends. The

¹² Specific language for the LOA is not recommended as the parties have sufficient historical background to initiate same. The intent is that the benefit will go into place with the effective date of the cba.

City is proposing the following premium contribution rates for employees hired prior to ratification of the agreement

Effective April 1, 2018 – 13%
Effective April 1, 2019 – 14%.

The City also proposes that the monthly premium contributions be established based upon a prospective, actuarial analysis rather than the retrospective negotiated insurance base.¹³

Union Position

In support of the Union's proposal, including its options-based approach to insurance premiums (and its opposition to the twenty percent (20%) new hire provision proposed by the City)¹⁴ the Union offered evidence that the City did not take full advantage of cost-saving measures available to it. The City could have approached the Union for the purpose of exploring mutually agreeable cost saving solutions during the term of the current cba. Union Ex 39, p33.

Some of the suggested cost saving measures offered by the Union are below:

- The City failed to maximize generic fill rates on prescription drugs. Steger testified that the failure to achieve greater savings through generic drugs is likely due to the absence of a formulary design (which would also include step therapy and prior authorizations), a cost containment measure that has been in use by other public employers since the 1990s. Tp220.¹⁵
- The City has also failed to open up its wellness programs to dependents despite the fact that 68% of CWA bargaining unit employees have family insurance benefits. *Id.* If it is assumed that wellness programs reduce insurance costs when City employees participate, then insurance costs are similarly reduced when covered dependents participate in the same programs.
- The City has not put into effect controls that permit it to recoup 100% of drug rebates on the medical side of the benefit plan compared to the retail and mail order pharmaceutical side of the benefit plan. Tp 221.
- In a similar vein the City has no plan in place to manage expensive specialty drugs, such as chemotherapy drugs. Savings can be obtained through

9. At the hearing the City amended the language of its Article 18.2 proposal. Tp 92:3-93:9. The City requested the FF recommend its Article 18.2 language encompassing the on the record amendments. If the City's proposal is recommended, the City requests the contribution rate goes into effect for employees hired before the first of the month following ratification of this agreement.

¹⁴ The Union asked the FF to consider many of these same arguments as being supportive of its position that the 20% new hire premium contribution rate is unacceptable and should not be implemented.

¹⁵ A formulary proposal is set in the new insurance beginning in 2018.

monitoring and preventing overbilling by providers and additional care and monitoring of patients to increase the likelihood that the drug therapy is successful. While few employees might use these expensive drugs, these can represent a significant portion of an employer's pharmaceutical benefit cost. Tp 221-223.

- Narrower retail drug networks increase City bargaining power and may result in significantly reduced drug prices. The City has not taken advantage of that option. Tp 224-225.
- The City has not taken advantage of implementing a narrower provider network for specialists. Steger testified that such programs drive employees and dependents to the best in class providers who have better outcomes and typically at a lower total cost of total care.

Many of the cost-savings measures referred to above could have been implemented with the Union's agreement prior to any changes in plan design during this bargaining cycle. Reducing the cost of medical care in the manner described above puts downward pressure on the insurance premium, since the cost of claims is a factor under either negotiated insurance base or funding rate basis.

The City's failure to attempt to take advantage of significant cost savings opportunities through mid-term agreements with the Union undermines its opposition to the Union's Section 18.2 proposal and the claimed need for a 20% contribution rate for new hires. (discussed further below)

New hires contribution rate

City Position

The City proposed a 20% monthly premium contribution rate for all new hires. Establishing a 20% monthly premium contribution rate for newly-hired CWA employees will not affect current members of the bargaining unit. The proposal is consistent with the City's other recently settled agreements. If the City's proposal is recommended, the City requests the 20% contribution rate goes into effect for employees hired on or after the first of the month following ratification of this agreement.

The City requested the FF take notice of Resolution No. 17-17: as of September 19, 2017 the City adopted a 20% monthly premium contribution for newly hired MCP employees. That means the City's implementation of a 20% contribution for new hires is nearly achieved City wide application except for FOP and IAFF.

Union Position

The Union does not agree under any circumstances that its newly hired members should pay a 20% monthly insurance premium contribution.

Steger testified that in her considerable experience that a 20% employee contribution is “way above and beyond the norm for an active population.” Tp 219. Notably the City did not support its 20% proposal by reference to any external comparables with 20% cost sharing. Nor did the City argue that its financial condition necessitated the higher percentage contribution for new hires.

Like the City’s opposition to the Union’s proposed caps, its argument for the 20% provision is based on conjecture about rising insurance costs in the future and internal City comparables.¹⁶

The fire and police cbas are subject to ongoing negotiations. As with the City’s proposed elimination of the 2% PERS pick up, the Union submits that the City’s internal comparables as of now are insufficient to support the City’s new hire premium proposal.

Considering that CWA members have fallen behind their co-workers in other bargaining units and taking into account the City’s strong financial condition, it is unnecessary that newly hired CWA bargained unit employees pay a greater share of the premium compared to incumbent unit employees simply because that will occur in some other City bargaining units. Under the Union’s proposal all employees will contribute more to insurance premiums and their percentage contribution increases during the term of the cba. The cost of providing insurance benefits to CWA members is already lower than all other bargaining units and MCP. When the changes to plan design described above are added into the mix, the City has achieved sufficient cost savings during this bargaining cycle with CWA. The City’s 20% proposal is overreaching and should be rejected.

Analysis

Recent cbas between the City and AFSCME 2191, AFSCME 1632 and FOP/OLC provide for a 14% monthly employee insurance premium contribution in 2018 and a 15% contribution in 2019—identical to the City’s offer to CWA. MCP employees are already

¹⁶ As to comparables the City relies on the terms in recent cbas reached with other City bargaining units. Specifically the two recently negotiated AFSCME contracts and the FOP/OLC cbas require newly hired unit employees to pay 20% of the premium. City Ex D and E.

paying 15% in 2017. The monthly premium contribution for that group will increase to 16% in 2018 and 17% in 2019.

The City reached agreement with AFSCME 2191, AFSCME 1632 and FOP/OLC and MCP to establish a 20% monthly insurance premium contribution for new hires. Setting new hire insurance premium contributions at 20% provides the City's newest employees with stability in their premium contribution rates.

The City's position is reinforced by external comparables. The average family premium contribution in the Columbus region in 2017 has increased to over 16% and is expected to continue to rise.

SERB's Cost of Health Insurance survey found that employees in this region were contributing 14.9% for single plans in 2017. The City sought a 14% contribution in 2018 and a 15% contribution in 2019 for its current employees and a contribution of 20% for its newly-hired employees. Given the health care landscape in 2017 these are reasonable proposals and are recommended.

The City proposed switching to a prospective, actuary established funding rate. In contrast the current plan known as the "negotiated insurance base" uses a retrospective calculation of actual claims experience to determine health care premiums for the following year.

Basing the employee premium contributions on a retrospective "negotiated insurance base" as required by this cba is an anomaly in the state. Neither the City nor the Union identified any cba outside of the City that establishes premium contribution rates based on a retrospective analysis. City witness Terri Copley testified she has no other clients who use a retrospective analysis. She testified that she would not recommend that her clients use that method. The Union's insurance expert Steger agreed that there was "no question" that the City's proposed funding rate was the more common method.

The City's proposed actuarial funding rate is projected to save the parties money in the first year. The City projected that the actuarial funding rate will initially result in a 1.5% reduction in premium costs over the current funding method. The prospective actuarial funding rate allows employees to realize the savings in the first year of the changes rather than waiting until the following year per the extant method. Agreeing to

the plan design changes *without* agreeing to implementation of the actuarial funding rate at the same time will unnecessarily cost CWA employees more money. Therefore, the Union's projections while considered and noted are not persuasive.

Union concerns about the actuarial funding rate are not sufficiently compelling to bar the City's intent to change the funding method. While Steger suggested there was greater variability in the actuarial funding rate, she also testified that she did not believe there was anything that would prohibit the actuarial funding rate from taking into account an aberrant year of claims experience. The actuarial funding rate is a forward-looking health care funding method designed to take into account changes in the health care landscape conducted by a certified actuary. The Union's resistance to the actuarial funding rate method is a minority position.

There is no dispute that the City's health care costs have risen 114% in the last 10 years and will likely continue to rise. The actuarial funding rate's inclusion of health care trends will allow the City to take into account increasing health care costs and savings up front. It will ensure the Trust Fund is properly funded to pay for employees' health care. Not making the changes necessary to fully fund the Trust Fund puts future benefits at risk. The City's proposal is necessary to ensure employees' benefits continue to be funded at an appropriate rate.

The Union's proposed insurance premium cap language is rejected. Caps would defeat the cost-sharing principles. Caps may render the increases the City seeks in the monthly premium contributions impossible. The City's proposal provides for greater cost sharing between the City and employees. Actual costs of the health care plan will be a shared burden borne by the employees as well.

Another factor militating against caps is that caps, by eliminating the risks associated with increased costs, provide scant incentive to employees to be conscientious consumers of health care benefits. In order to continue to provide a plan with the level and scope of benefits coverage, it is both prudent and appropriate that both parties share in those costs.

The City has negotiated to remove any caps on employee monthly premium contributions. While both CWA and FOP had capped contribution rates in the past, the City to date has negotiated the caps out of every City cba except for IAFF. Allowing

capping the monthly premium contributions at a certain amount to re-appear in the CWA cba would essentially undo all the trend realized over past bargaining cycles. The FF rejects the Union alternate proposal on caps.

The FF notes that the Union testimony regarding a multi-faceted approach to cost savings in managing the City's medical insurance plan was impressive, creditworthy and potentially a means and method of keeping premiums in check.

What did not seem to be part of the bargaining proposals was partnering with the Union in exploring the options outlined by the Union's expert witness. It is hoped that collaboration will be the mode and means of future actions as the health care benefits are of mutual benefit and cost, maybe more than other benefits.

The FF does not believe it would be useful or even realistic for her recommendation to force such a partnership in the absence of any stated willingness of the City to collaborate in this process. But because the ever-rising costs of health care create a dilemma in budgets and expenses for the whole workforce it is necessary to begin to mutually explore creative and alternative approaches.

Another note: the hearing contained testimony about the "Cadillac" tax looming at the end of the cba being discussed herein. Neither closing brief indicated what measures it sought to deal with this unknown. In fairness because of the national uncertainty on health care nothing could be proposed at this time that realistically could be "written in stone." The FF notes for the record that the recommendation does not speak to the "Cadillac" tax for these reasons.

RECOMMENDATION

The language in Article 18.2 (A) shall read as follows:

The monthly premium for all full-time employees hired before the first of the month following the ratification of the Agreement who participate in the City's insurance programs shall be an amount equal to thirteen percent (13%) of the negotiated insurance base.

Effective with the pay period that includes April 1, 2018 the monthly premium for all full-time employees hired before the first of the month following the ratification of the Agreement who participate in the City's insurance program shall be an amount equal to fourteen percent (14%) of the funding rate established by the actuary for the City.

Effective with the pay period that includes April 1, 2019 the monthly premium for all full-time employees hired before the first of the month following the ratification of the Agreement who participate in the City's insurance program shall be an amount equal to fifteen percent (15%) of the funding rate established by the actuary for the City.

The monthly premium for all full-time employees hired after the first of the month following ratification of the Agreement who participate in the City's insurance program shall be an amount equal to twenty percent (20%) of the negotiated insurance base or the funding rate established by the actuary for the City, whichever is applicable.

The funding rate established by the actuary for the City will be consistent with industry standards and based upon the actuary's analysis of information, including but not limited to applicable claims and enrollment data, reserve liabilities, expenses, industry trends and plan design; the funding rate and related information will be provided to the Union for each benefit year of February 1 through January 31 as soon as practicable but no later than March 1.

The premium will be established as single and family rates. The employees' portion of insurance coverage will be deducted from paychecks as is currently practiced. One-half (1/2) of the monthly premium will be deducted each pay period not to exceed the total monthly premium.

The Union may at its discretion reimburse the City up to twenty percent (20%) of the employee's contribution for health care premiums. The manner of reimbursement will be determined by the parties.

Article 18.2 – Tobacco Surcharge

City position

The City is proposing a \$25 premium surcharge for tobacco users. Recent cbas between the City and AFSCME 2191, AFSCME 1632 and FOP/OLC provide for a \$25 premium surcharge for tobacco users effective September 1, 2017. MCP employees began to pay a \$25 tobacco surcharge effective October 1, 2017. City Insurance Tab 1; Union Ex 6; 12; 16; City Council Resolution 17-17. The \$25 surcharge is consistent with the City's cost containment proposals and overall wellness initiatives. Incentivizing employees to quit using tobacco leads to healthier employees and decreased insurance costs for the City and its employees. Those who continue to use tobacco would appropriately be required to also bear the increased costs.

Union Position

The City did not offer any evidence to support the necessity of its proposal. No testimony was offered as to the effect it likely would have on employee behavior. Nor did any witness explain how/when it would be implemented. The Union submits that the City failed to meet its burden regarding the necessity of a tobacco surcharge.

Analysis

The Union pointed out correctly that evidence concerning tobacco usage was lacking. Regardless the dangers of tobacco usage are beyond debate. The City may have a program for implementation of the desired language in place for its other bargaining units. This is presently unknown. The City will have its bargaining obligations intact for the roll out of this presumptively new program.

Despite the lack of detail, the FF concludes that this type of “tax” is akin to a wellness program, benefits the whole of the workforce, saves dollars for increased health care costs associated with smoking and has a relatively moderate adverse economic impact on employees.

It would have been useful to know if a smoking cessation program is in place or in planning stages. It would have been useful to know how the \$25 tax was decided upon as a reasonable amount. Despite some reservations on the sketchiness of the record, the FF finds the benefits of this proposal outweigh any at this moment concerns about implementation. The statute and cba will guide the implementation process.

RECOMMENDATION

Article 18.2. (B) shall read as follows:

(B) After the first of the month following the effective date of the Agreement, employees hired on or after that date who participate in the City’s medical insurance program and use tobacco will be charged a twenty-five dollar (\$25.00) per month surcharge.

Article 18.8 Benefits Information.

The City requests that the FF recommend its language for Article 18.8. The Union presented no opposition to this City proposal.

Analysis

This proposed method of distribution of the required health care benefits information is cost effective and efficient. Information regarding health insurance is easily accessible 24/7, providing a method to research questions that is accessible to most at home and at work. The move away from paper booklets is both cost effective and ecologically appropriate. Updates can be posted in a timely manner. There should be prompt updates when changes loom and when changes occur. The word “reasonable” should not become a source of grievances.

RECOMMENDATION

The language follows:

Section 18.8. Benefits Information.

The City will provide and update as necessary information on its website concerning bargaining unit employee insurance benefits within a reasonable time frame before any updates take effect. The City will incorporate changes made to insurance benefits through the collective bargaining process into the Summary of Benefits and Coverage (SBC) as soon as possible but no later than thirty (30) days after City Council approval of the 2017-2020 Agreement.

ISSUE 5 Article 19 Seniority

City Position

The City proposes current language. The Union is seeking to create seniority rights where none now exist¹⁷ and apply them to all D-class positions across the City’s departments and divisions. This cba has been in place for decades. It has never contained “traditional” union seniority rights. This proposal is a monumental change that would have City-wide impact and will fundamentally change the way the City operates.

¹⁷The cba has no seniority provisions. It does not provide for bidding for positions, locations, vacations or shifts. It does not provide bumping rights. It does not provide promotions based upon seniority.

Union members are covered by Civil Service rules. Said rules protect employees' seniority interests with respect to layoffs, transfers, bumping rights and certain types of vacancies.

The proposed language is not born of any stated necessity. Implementation would require substantial new design and analysis.

The CWA bargaining unit has always been recognized as unique—it has both salaried, exempt employees and hourly, non-exempt employees. It contains classifications that range from arborist to manager to golf professional to engineer to automotive technician to office assistant. The employees' job sites range from on the street, water treatment facilities, golf courses, recreation centers and executive offices.

The Union seeks by its proposal to institute wholesale changes to the way the bargaining unit is managed. These proposed changes if recommended and implemented will profoundly disrupt the way the City functions. Having so stated the City is not categorically opposed to seniority for this unit for appropriate classifications once a study has been made to explore its scope and effect.

The City explained in its testimony that there are numerous classifications for which the Union's proposed seniority language will not work. Tp 239:2-7. The Union has failed to justify the proposed radical, wholesale change. Instead the Union presented commentary about one employee out of roughly 450 employees who allegedly experienced some hardship based on his current shift. Tp 237:5-13.

Despite the unsupported allegation of a problem, the City is fine with the idea of working with the Union to develop a solution. During negotiations the City presented the Union with its concerns that there were numerous positions throughout the affected classifications where the proposal would not work. Tp 238:22-239:7. The City is concerned about inclusion of positions with only one incumbent. The City likewise is concerned about the effect such proposed language may have on positions where the employees all work the same shift and location. Tp 241:11-242:1.

The City considered individual positions where it could offer some seniority rights without harming its operations. It asked the Union to engage in the project of identifying appropriate positions. The City proposed classifications that it believed would benefit most from seniority without sacrificing City operations. The City identified two particular

classifications where seniority rights would work and presented a MOU to the Union establishing certain seniority rights for Street Cleaning & Maintenance Supervisors and Parking Enforcement Supervisors classifications as they relate to shift, reporting location, and work schedules. Tp 239:15-241:1; City Ex F.

During the hearing the City re-proposed its MOU but also presented the Union with a side letter committing the parties to cooperatively exploring the issues of seniority in appropriate detail to develop a workable solution. Tp 239:22-240:5; City Ex G. The side letter will allow the parties to explore appropriate positions and what seniority rights should be included. Tp 240:6-13.

Union Position

The Union has proposed to create a new, seniority based bidding system for D-class employees in the bargaining unit. No such system exists today. Employees cannot use their seniority to bid on vacancies, work locations, shifts or days off. In the absence of job classification seniority rights, management decides who can move from one work location or schedule to another without any consideration of how long an employee has served in the classification.

The Union's proposal consists of a limited, seniority based bidding system that permits employees already in the job classification to use seniority to bid for work locations, shift and days off when a vacancy occurs in their job classification as determined by the City. Management is not required to fill vacancy.

The Union's proposal also permits the City to limit movement from one work location or schedule to another based on a "special qualifications" requirement.

The system proposed by the Union does not require the City to recognize seniority for purposes of movement between classifications.

All other City bargaining units (with the exception of the 54 person FOP/OLC unit) have some form of seniority-based vacancy bidding in their contracts. Union Ex 39, p36; Tp 121.

The City's failure to recognize CWA employees' seniority within their job classification has real, negative consequences. McCune testified that very senior employees complain they are essentially trapped on their shift or work location for years,

unable to obtain more favorable working conditions because management assigns more desirable work locations and schedules to junior and/or favored employees. Tp 236-237.

During bargaining the City claimed the Union's proposal would not work in many of the job classifications in the bargaining unit. Tp 238-239. This assertion was unsupported. There is no evidence that the City undertook studies or analyses of the Union's proposal prior to rejecting it. There is no evidence that the City even discussed it with operational managers. Union Ex 39, p35; Tp 235-236.

The City failed to engage the Union on the important issue of seniority rights during negotiations. McCune testified that the Union stands ready to work with the City on related operational issues that may arise after implementation of its proposal. There is no reason to delay extending the benefits of job classification seniority to CWA members any longer.

Analysis

The FF lacks insight as to how the bargaining unit- despite its variety, breadth and depth- had negotiated cba after cba without initiating prior to this round language regarding seniority. It is also true that the sheer variety and depth of the CWA unit prohibits a cookie cutter approach.

Although the absence of any historical language makes the task of beginning an approach to gaining seniority benefits for job purposes appear daunting, it is a task that should when timing is right have results providing orderly application of long held and established labor principles and concepts. The idea that someone in place for a longer time might receive first and/or sole consideration for a vacancy, transfer, promotion or other job-related consideration is neither radical nor inconsistent with any of the City's stated interests.

The City argued that civil service provides sufficient recourse for employees. It does not for reasons both obvious and requiring greater discussion not relevant at this time since the FF is not in this cba recommending an immediate transition to seniority rights. Suffice it to say that bidding on a different shift or location has never been a matter appealable to or governed by civil service. For others of the ideas and concepts the Union suggested civil service is likewise unavailing. Regardless the parties are in no way obligated to follow civil service post RC 4117 in most if not all respects.

The FF supports the apparent collaborative approach to exploring seniority language promised by the parties. The parties should consider a timetable with stated goals and desired outcomes. Perhaps next cba cycle there will have been sufficient discussion and give and take to permit full-bodied language regarding seniority. The FF is persuaded by the record as it now stands that a wholesale imposition of a seniority system sua sponte as suggested by the Union is premature.

RECOMMENDATION

The FF recommends the City's language as follows:

The parties will execute a MOU stating as follows¹⁸:

Employees in the positions as listed in the attached Exhibit may bid based upon classified seniority for shift, reporting location and work schedules (i.e. different days off or different regular hours) each time a vacancy in the classification occurs and the Appointing Authority determines to post the position.

Duration

This MOU will remain in full force and effect for the duration of the collective bargaining agreement between the City and CWA, Local 4502 effective April 2017 through April 23, 2019 unless modified by mutual agreement.

As an additional item relating to seniority the FF recommends execution of the following **Side Letter**, to be numbered as required by the chronology of the cba.

Letter dated August 30, 2017

To:

**Jonathan Wentz
Chief Negotiator
CWA Local 4502**

This letter is to document the parties' commitment to establishing a committee or "study group" consisting of at least two CWA members and at least two members of Human Resources or Labor Relations to evaluate whether it is operationally feasible to establish certain seniority rights related to, for example, filling of vacancies and/or bidding on shifts or locations, for certain D class employees.

¹⁸ Signature lines and the Exhibit identifier will be prepared by the parties if this proposed language is accepted. The Exhibit (currently unidentified) refers to the following two positions in Public Services: Street Cleaning and Maintenance Supervisors and Parking Enforcement Supervisors.

This side letter of agreement shall expire April 23, 2020.

Please sign the letter in the space below if the foregoing accurately reflects the understanding of the parties.

Sincerely,

s/ _____
Jennifer E. Edwards
Chief Negotiator, City of Columbus

Agreed to and accepted on behalf of CWA Local 4502

s/ _____
Jonathan Wentz,
Chief Negotiator, CWA Local 4502

Issue 6 Article 27 – Duration

At the hearing, the City and the Union reached a tentative agreement on the City's renumbered Article 27 (formerly Article 26) Duration proposal. Tp 7:1-18.

RECOMMENDATION

The FF recommends the agreed upon language as stated below.

This Agreement shall be effective when executed by authorized representatives of both parties and shall remain in full force and effect until 11:59 p.m. on April 23, 2020. It shall automatically be renewed from year to year thereafter unless either party shall notify the other in writing at least sixty (60) days prior to the April 24 anniversary date that it desires to modify this Agreement. In the event such notice is given, negotiations shall begin no later than forty-five (45) days prior to the anniversary date.

In the event either party desires to terminate this Agreement, written notice must be given to the other party no less than ten (10) days prior to the desired termination date which shall not be before the anniversary date set forth in the preceding paragraph.

Conclusion

Both parties presented exhaustive testimony and exhibits supportive of the respective positions taken. The parties clearly are willing as evidenced by the number of matters settled prior to fact-finding to engage in good faith in the processes set forth in

statute. It was and remains the parties' practice to resolve differences whenever possible. The Union sought to achieve economic gains and equity. This was accomplished in certain areas without sacrificing the City's articulated goals of financial prudence and stability.

The issues remaining for decision by the FF were well-argued and based in different interests and competing concerns. In making the above recommendations, the FF was mindful of the statute and well-informed by the parties of the elements thereof which supported each party's self-interest.

The FF hopes the report serves the parties to resolve and bring finality for this bargaining cycle to the above remaining disputes.

Respectfully submitted,

s/Sandra Mendel Furman

1119 South Cassingham Rd

Columbus, OH 43209

614/638-2826

Supreme Court #0010057

Certificate of Service

An electronic copy of the above report was sent by electronic mail to the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215; to the City of Columbus, c/o Jennifer Edwards and to CWA Local 4250 c/o Jonathan Wentz on October 10, 2017.

s/ Sandra Mendel Furman

Sandra Mendel Furman