

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

FACT-FINDING TRIBUNAL OF THE

JAN 9 10 15 AM '98

STATE EMPLOYMENT RELATIONS BOARD

JAN 9 10 14 AM '98

R

IN THE MATTER OF:

**COLUMBUS MUNICIPAL
ASSOCIATION OF GOVERNMENT
EMPLOYEES,
Employee Organization,
and**

**CITY OF COLUMBUS,
Employer.**

**REPORT OF FACT FINDER
CASE NO. 97-MED-03-0333**

DATES OF HEARING: October 30, 1997, November 3, 1997, and November 18, 1997.

PLACE OF HEARING: Columbus, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

William Moul, Attorney
John Dilles, President
Bill Mahaffey, Board Chairman
Shannon Guay, Administrative Assistant
Vickie Hagenmaier, Aging Programs Specialist
Debbie Iora, Administrative Analyst I
Doris Vance, Customer Relations Supervisor
Steve Lennon, Administrative Analyst II
Rick Irwin, District Assistant Manager
James Davis, Engineer III

FOR THE EMPLOYER:

Ron Linville, Chief Negotiator
Michelle Metzger, Assistant Negotiator
Jan Campbell, Labor Relations Manager
Nikki Leatherbury, Labor Relations Coordinator
Scott Messer, Personnel Manager, Parks & Rec.
Mark E. Kouns, Deputy Director, Public Utilities
Theresa Carter, Deputy Exec. Dir., Civil Service Comm.
Brooke Carnevale, Personnel Manager, Public Safety
Cheri Mason, Executive Assistant
Jeff Seese, Labor Relations Coordinator
Dana Liming, Employee Benefits Analyst
Lynn Carter, Civil Service Commission

PROCEDURAL BACKGROUND

On July 25, 1997, the State Employment Relations Board ("SERB") appointed the undersigned as fact finder upon selection by the parties pursuant to Ohio Revised Code Section 4117.14(C)(3). Fact-finding sessions were held on October 30, 1997, November 3, 1997, and November 18, 1997. The hearings were held at the City of Columbus Police Training Academy. During the initial fact-finding session, the fact finder mediated the issues which were at impasse. The remaining issues were the subject of a fact-finding hearing which was held during the final two sessions. At the close of the hearing on November 18, 1997, the parties stated a desire to file post hearing briefs. The filing date for the briefs was set for December 2, 1997, and was later extended to December 4, 1997, by mutual agreement of the parties. The report and recommendations of the fact finder are to be served upon the parties no later than January 7, 1998, pursuant to the mutual agreement of the parties.

This matter involves the negotiation of a successor collective bargaining agreement between the City of Columbus, Ohio ("City") and the Columbus Municipal Association of Government Employees ("CMAGE"). CMAGE represents a bargaining unit of approximately twelve hundred professional, technical, managerial and supervisory employees, who are employed in various departments of the City. The prior agreement, which was the initial agreement between the parties, became effective on November 21, 1994, and expired on August 24, 1997.

Prior to the fact-finding hearing, the parties engaged in six formal negotiation sessions, beginning on August 7, 1997.

MEDIATION

On October 30, 1997, the fact finder attempted to mediate the issues in dispute. The mediation process continued for one day, and the parties were able to agree on some of the issues. The only remaining issues are those which are discussed in this report. The parties have reached a tentative agreement on all other issues.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest 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;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FINDINGS OF FACT AND RECOMMENDATIONS

The tentative agreements of the parties on these issues are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

ARTICLE 3 - ASSOCIATION SECURITY AND RIGHTS

Position of CMAGE

CMAGE proposes that language be added to this article which will guarantee that the City will provide sufficient release time to CMAGE officers to accomplish their responsibilities as officers, and that the City assign duties to these officers in a manner which will allow them to fulfil their responsibilities as representatives of CMAGE. CMAGE states that the expired agreement does not contain any language which requires the City to provide release time to CMAGE officers. Conversely, in agreements with other unions which represent large numbers of employees, the City has agreed to give one or more union representatives full-time paid leave to perform their representational duties.

Position of the City

The City contends that the proposed language is unnecessary. The City currently accommodates the needs of the CMAGE officers by allowing sufficient time for them to carry out their representational duties. In addition, Article 5 of the agreement specifically provides for release time for grievance processing. CMAGE has not shown that its representatives have been prevented from fulfilling their responsibilities as officers.

The City asserts that the language is overly broad in that it contains no definition of the type of activities for which release time could be used. The City suggests that, under the proposed language, CMAGE could use release time for any reason it

desired. The City further contends that the proposal interferes with well-established management rights by requiring the City to assign duties in a specified manner.

Discussion and Findings

The thrust of the proposed language is that the City be required to provide release time to those employees who are officers of CMAGE. The parties agree that the City currently allows sufficient release time. However, CMAGE is concerned that the City could change its current practice, or at least make it more difficult for CMAGE officers to carry out their representational duties.

Generally, a party proposing a change the status quo has the burden of proving that the change is necessary. In this instance, CMAGE has not shown that the current situation is such that additional language is needed. CMAGE admits that, during the term of the expired agreement, it has been able to reach an accommodation with the City which allows the officers to fulfill their representational responsibilities. Given the absence of evidence to support a need for this provision, the fact finder cannot recommend its inclusion in the new agreement.

Recommendation

The fact finder recommends that the proposal of CMAGE for Article 3 not be included in the new agreement.

ARTICLE 4 - RESERVATION OF RIGHTS

Position of CMAGE

CMAGE proposes adding the following paragraph to the collective bargaining agreement:

It is recognized that all City rules and regulations with City-wide application shall be fairly and consistently administered with respect to both employees within and employees without the bargaining unit. Where a rule or regulation has a more narrow application, e.g., within a Department or Division, the same principle shall apply within such coverage area.

CMAGE contends that the language will merely put in writing a concept which the City has stated that it is in agreement with. CMAGE asserts that, during the term of the expired agreement, rules and regulations have not been uniformly administered throughout the various departments of the City. CMAGE points out that many of the City's other collective bargaining agreements contain language similar to that proposed. CMAGE states that it is not proposing any additional employee rights but is only asking the City to affirm that it will apply its rules and regulation in a consistent and uniform manner.

Position of the City

The City opposes the addition of the proposed paragraph. It states that it agrees that those rules and regulations with city-wide application should be fairly and consistently administered. However, the City believes that there could be a problem with the proposed language because the employees represented by CMAGE work in approximately 30 different divisions, each of which has unique rules and regulations. The City also asserts that CMAGE has not presented any meaningful examples to show that the proposed language is necessary. The City is also concerned that the proposed language could be used by CMAGE to make unjustified challenges of actions of the City.

Discussion and Findings

The language proposed by CMAGE seems to state a very basic principle of administering a large organization. That is, rules and regulations should be enforced in a uniform manner throughout the organization. However, the City does have a legitimate concern in that the term "rules and regulations" is vague. Conceivably, the term could apply to oral agreements and rules intended to have a very narrow application.

The City points out that the human resources department maintains a set of rules known as the Central Work Rules. These rules are applicable to all employees of the City. Unlike the term "rules and regulations," Central Work Rules denotes a specific

set of rules and there is no potential problem in determining whether something is or is not a rule. The City's current collective bargaining agreement with AFSCME contains a provision requiring uniform enforcement of the Central Work Rules and personnel policies. The City has already agreed to the uniform application of these rules and policies across department lines. Employees in the AFSCME unit, like those in the CMAGE unit, work in all of the different departments of the City. Therefore, the language found in the AFSCME agreement should also be applicable to CMAGE. The fact finder will recommend the adoption of the language found in the AFSCME agreement.

Recommendation

The following language, contained in Section 8.1 of the collective bargaining agreement between the City and AFSCME (CMAGE Exhibit 3), should be adopted as Section 4.3 of the CMAGE agreement:

The City will establish and, from time to time, revise Central Work Rules and personnel policies; such rules shall not be in conflict with this Contract. Such rules and policies shall be uniformly applied and any work rules made by individual departments or divisions shall not be in conflict with the Central Work Rules and personnel policies.

ARTICLE 7 - VACATIONS

Position of CMAGE

CMAGE has proposed a change in the manner in which vacation credit is accrued. Currently, employees accrue a certain number of hours of vacation per 80 hour pay period. The expired contract states that an employee must have at least 40 "hours of work" during a pay period in order to accrue any vacation credit for that pay period. The term "hours of work" excludes paid sick leave and paid injury leave. The CMAGE proposal would allow paid sick leave and paid injury leave to be included as "hours of work" for the purpose of calculating vacation accrual.

CMAGE points out that all other City employees, including employees not covered by a collective bargaining agreement, have both paid sick leave and paid injury

leave included in the calculation of vacation time. CMAGE states that the different treatment of its members reflects a punitive attitude of the City, relating back to the negotiation of the initial agreement in 1994.

Position of the City

The City contends that the proposal was not submitted to the City's bargaining team until September 12, 1997, at the next to last bargaining session. According to the City, the issue was never discussed during negotiations. Therefore, CMAGE should not be permitted to present this proposal at fact-finding. The City also asserts that CMAGE has not set forth any compelling reason for the change.

Discussion and Findings

The fact finder notes that the CMAGE proposal for Article 7 was contained in the prehearing submission to the fact finder as required by OAC 4117-9-05(F). Therefore, the issue is properly before the fact finder.

As to the merits of the proposal, the fact finder notes that the proposed language would result in a more rational procedure for the calculation of vacation accrual. The collective bargaining agreement defines "hours of work" to include holidays, vacations, military leave, CMAGE release time, jury duty, and compensatory time, in addition to actual hours worked. Both sick leave and injury leave are recognized types of paid leave to which employees are entitled pursuant to the collective bargaining agreement. No rationale has been presented by the City to justify the different treatment of sick leave and injury leave for the accrual of vacation time, as compared to other types of paid leave. All other City employees receive credit toward vacation for both sick and injury leave.

Recommendation

The fact finder recommends the adoption of the proposal of CMAGE to add paid sick leave and paid injury leave to the definition of "hours of work" in Section 7.3 so that such paid hours will count in determining vacation eligibility.

ARTICLE 9 - SICK LEAVE

A. Section 9.4 - Sick Leave Accrual

Position of CMAGE

CMAGE proposes an increase in the number of hours of annual sick leave accrual from 72 to 96. Prior to CMAGE becoming the exclusive representative of the members of the bargaining unit, employees in the unit received 120 hours of sick leave per year. Members of other bargaining units in the City receive from 96 to 168 hours of sick leave per year. When the 1994 agreement was negotiated, the City told CMAGE that it intended to reduce the number of hours of sick leave accrual in the AFSCME collective bargaining agreement to 72 hours. However, the new agreement with AFSCME, which became effective April 1, 1996, provides for 96 hours of sick leave per year. CMAGE also points out that 72 hours of sick leave is not sufficient to cover the waiting period on the City's short term disability policy.

Position of the City

The City believes that 72 hours of sick leave is adequate. The evidence (City Exhibit 7) shows that the CMAGE unit used an average of 36 hours of sick leave in 1995 and 38 hours in 1996. Therefore, the City argues that CMAGE is only attempting to increase sick leave accrual so that employees will be able to sell back a greater number of hours to the City and thereby increase their compensation. The City points out that the purpose of sick leave is to allow employees to continue to receive compensation when they are ill, not to increase the amount of a cash bonus.

The short term disability policy of the City has a waiting period of 14 calendar days. As employees can "bank," or carry over, sick leave from year to year, almost all employees are able to maintain a sufficient amount of sick leave to cover the waiting period.

The City notes that employees covered by the agreement with the Fraternal Order of Police, Ohio Labor Council (OLC)¹ and employees in the Management

¹This collective bargaining agreement covers crime analysts, property evidence technicians, traffic bureau impounding officers and criminalists.

Compensation Plan (MCP) also have 72 hours of sick leave per year. The City points out that the firefighters only receive the equivalent of nine work days of sick leave per year, based on their workday of 24 hours. While it is true that the AFSCME unit receives 96 hours of sick leave, the amount was reduced from 120 during the last round of negotiations, pursuant to an attempt to reduce overall sick leave expense throughout the City.

Discussion and Findings

The current amount of sick leave is ample for most employees. Employees receive eight days per year with the ability to accrue an unlimited amount of sick leave. While a few employees may have a valid need for additional sick leave, the needs of a few cannot be used to justify an increase for all employees.

CMAGE has not shown that there is a compelling need to increase the amount of sick leave. While some groups of City employees receive more sick leave than CMAGE, other groups receive the same amount. The firefighters receive less sick leave in terms of days of work. The amount of sick leave should remain at 72 hours per year.

Recommendation

The fact finder recommends that the proposal of CMAGE for Section 9.4 not be included in the new agreement.

B. City Proposal to Restructure Article 9

Position of the City

The City proposes the elimination of the language in the expired agreement which relates to procedures used for the transition to the revised sick leave rules. These procedures were used in 1995 and 1996 for the conversion of sick leave banks. The City contends that the language is obsolete and that its removal would simplify the contract. The City also proposes the restructuring of Article 9 so that language relating

to similar subject matter is grouped together. The City asserts that this restructuring would make the agreement easier to understand.

Position of CMAGE

CMAGE is opposed to the proposals of the City to restructure the sick leave article. The City proposes to eliminate language which was used in the initial contract to specify the procedures for massive changes in the sick leave rules. CMAGE asserts that implementation of the new rules has caused much confusion and discontent, which has only recently subsided. CMAGE maintains that the elimination of the language would only create additional confusion.

Discussion and Findings

The intent of the City's proposals is not to make any substantive changes but to simplify Article 9. However, CMAGE has a valid concern that the changes could create some confusion and misunderstanding. The possibility of confusion is greater when the language is imposed by a third party, such as a fact finder, rather than through negotiations. The current Article 9 is lengthy and complex. However, any attempt to shorten and simplify it should be done through negotiation so that all relevant considerations are addressed.

Recommendation

The fact finder recommends that Article 9 not be restructured as proposed by the City.

C. Section 9.6(B) - Payment for Unused Sick Leave

Position of the City

The City proposes the deletion of a provision which gives employees the option of retaining one-half of their unused sick leave each year and receiving payment for one-half of it. Currently, employees who have at least 16 hours of sick leave at the end of the year may transfer one-half of their unused hours to a sick leave bank and receive

a cash payment for one-half of the unused hours. The City asserts that this provision is used by only a few employees and its use causes administrative confusion.

Position of CMAGE

CMAGE contends that the City is attempting to further reduce benefits to CMAGE employees without any valid rationale. The fact that only a few employees used this provision does not justify its elimination. CMAGE points out that this provision does not impose any additional cost on the City.

Discussion and Findings

The City's primary rationale for its proposal is that the provision is not used by many employees. While only a small number of employees have used it thus far, more employees may decide to use it in the future. It is clear that the option of banking some sick leave and obtaining payment for the remainder is a desirable option for employees. The proposal requires the employee to make an "all or none" decision. The City has not presented sufficient evidence to justify the adoption of its proposal.

Recommendation

The City's proposal for Section 9.6(B) should not be included in the new agreement.

ARTICLE 10 - INJURY LEAVE

A. Section 10.8(A)

Position of the City

The City proposes some revisions in the injury leave procedures. The expired agreement provides that injuries incurred while at work "must be reported to the employee's immediate supervisor no more than forty-eight (48) hours after such injury is *known*." The City proposes changing the requirement to require reporting to take place within "two (2) working days after such injury *occurs*." The City argues that, since most injuries are the result of a single, traumatic event, employees should have no

problem reporting injuries when they occur. The City asserts the current requirement which requires reporting an injury when it is "known" causes difficulty in the administration of injury leave because of the subjective nature of the word "known."

The City also proposes language specifying that both "original and recurrent" injuries must be reported within the two-day time frame. The City relates that this language is necessary to specifically notify employees that the reporting requirement applies to both the original injury and to any recurrence of the injury.

The City also proposes language which would require an employee on injury leave to sign a form authorizing the Ohio Bureau of Workers' Compensation (BWC) to send the employee's first temporary total disability check to the City. The City contends that this would expedite the process by which the employee reimburses the City for duplicate payments, which occur when an employee receives BWC disability payments for days on which the City paid injury leave to the employee.

Position of CMAGE

CMAGE is opposed to the changes in injury leave proposed by the City. CMAGE states that the changes will impose additional restrictions on the injury leave benefit for CMAGE employees, who already receive less favorable injury leave benefits than employees in other bargaining units. CMAGE argues that the proposal to require notification with two working days after an injury "occurs" would be used by the City as a tool to deny otherwise valid claims on a technicality.

CMAGE asserts that there has been a continuing controversy concerning the definition of "recurrent injury." It points out that the City's Industrial Relations Board, which is currently revising the rules for injury leave, is likely to promulgate a new definition of "recurrent injury." CMAGE is reluctant to accept this new language without knowing the precise definition of the term.

CMAGE is also opposed to the proposal to require an employee to sign a form authorizing the BWC to send the first disability check to the City. It asserts that there are very few disputes over the calculation of the amount an employee owes to the City. In those cases where there is a dispute or mistake, it is better that the City bear the risk

of nonpayment. CMAGE contends that there is no record showing that CMAGE employees have failed to properly reimburse the City for injury leave. CMAGE is concerned that a mistake by the BWC could be compounded if the City is permitted to receive the first disability payment.

Discussion and Findings

Obviously, the City has legitimate interest in ferreting out those injury claims which are invalid. On the other hand, CMAGE does not want to see legitimate claims denied just because the employee did not "jump through all of the hoops."

The City's proposals could cause confusion in the procedures for obtaining injury leave. Although the proposed changes would not place an onerous burden on the employee, the changes are not necessary for the City to properly administer injury leave. The expired agreement gives the City, through the Director of Finance, the right to deny injury leave.² Therefore, the City already has a mechanism for curtailing the payment of improper claims.

With respect to the City's proposal to require employees to authorize the BWC to send the first disability check to the City, the fact finder concludes that the City has submitted insufficient evidence to show that the new language is needed to address a problem. The expired agreement requires that the employee make reimbursement to the City in a prompt manner. There has not been any evidence that CMAGE employees have failed to properly reimburse the City for duplicate payments.

Recommendation

The fact finder recommends that the City's proposals for Section 10.8(A) not be included in the new agreement.

²See Section 10.8(B)(2) of the expired contract (Joint Exhibit 1). An employee denied injury leave may appeal the denial to the Board of Industrial Relations pursuant to Section 10.8(B)(5).

B. Section 10.8(B)

Position of the City

The City proposes the addition of language to the agreement which will prohibit employees on injury leave from engaging in recreational activities where the physical demands of the activities conflict with the employee's medical condition. The City asserts that this provision would put employees on notice that they should not engage in recreational activities which would delay their recovery. The expired contract contains language which prohibits employees on injury leave from engaging in employment which requires activity inconsistent with their medical condition. To add a similar provision relating to recreational activities is logical.

Position of CMAGE

CMAGE opposes the additional language because it would allow the City to terminate benefits prior to a hearing. Although the employee could challenge the decision of the City to terminate benefits, the employee would be disadvantaged due to being off work and without benefits.

Discussion and Findings

The prohibition on engaging in recreational activities for employees on injury leave is consistent with the existing language regarding engaging in employment activities while on injury leave. It is reasonable to expect that an employee who is injured seriously enough to be unable to report for work should not engage in activities which might delay recovery. To have contractual language prohibiting employees from engaging in medically inconsistent employment activities, while not having similar language relating to recreational activities, could be interpreted as allowing an employee to engage in any activity as long as he or she was not engaged in employment.

The language proposed by the City is similar to the language used in the expired agreement regarding employment related activity. The proposed language is contained in the current AFSCME agreement.

Recommendation

The fact finder recommends that the following provision be included in the new CMAGE agreement:

Limitation on Recreational Activities. No injury leave payment shall be made to any employee engaged in recreational activities where the physical demands of such activities conflict with the injury/medical condition allowed.

C. Section 10.8(E)

Position of the City

The City proposes language which would allow it to discontinue the injury leave program if the City becomes self-insured for workers' compensation insurance. In order for the City to become self-insured, the state legislature would have to amend the workers' compensation statute to allow cities to have the option of becoming self-insured. The City desires to have the right to terminate the injury leave benefit if and when it becomes self-insured, as the injury leave program would be inconsistent with the administration of workers' compensation benefits.

Position of CMAGE

CMAGE asserts that it is very unlikely that the City will be able to become self-insured. Even if the legislature did pass legislation which allowed the City to become self-insured, the terms and conditions of the legislation are unknown. The City cannot expect CMAGE to agree to such a provision when the possibility of the City becoming self-insured is so speculative.

Discussion and Findings

While changes in the injury leave program may be necessary if the City becomes a self-insured employer for workers' compensation, it is premature and speculative to provide for this possibility in this contract. In addition, the City's proposal does not have any provision to compensate employees for the reduction in benefits which would occur due to the lower payments of workers' compensation compared with injury leave.

Recommendation

The fact finder recommends that the proposal of the City for Section 10.8(E) not be included in the new agreement.

ARTICLE 11 - HOURS OF WORK AND OVERTIME

A. Section 11.4(B) - Overtime Pay

Position of CMAGE

CMAGE proposes several changes in the overtime pay provisions. It proposes that overtime pay calculations be based on all hours in pay status. It proposes that overtime be paid for all hours worked in excess of eight per day. It also proposes that double time be paid for the seventh day of the work week. CMAGE contends that all of the practices which it proposes were in place for CMAGE employees prior to the effective date of the expired contract.

CMAGE states that, in comparing total overtime compensation for the first half of 1997, its D level³ bargaining unit members earned 4 percent less in overtime than AFSCME employees, whom they supervise. CMAGE argues that the manner in which overtime is calculated for CMAGE D Level employees unfairly penalizes them. CMAGE employees supervise AFSCME employees, but are paid overtime on a less favorable basis. This situation causes resentment among CMAGE employees. In fact, a grievance was filed on this issue in 1996.

Position of the City

The City opposes the proposal and argues that the fact that CMAGE and AFSCME employees work together does not justify any change in the method of computing overtime. The City points out that, in many places of employment, supervisors are not paid overtime even if the employees they supervise are receiving overtime.

³Only D Level employees in the CMAGE unit are eligible for overtime. The other employees in the unit, the E Level employees, are not eligible for overtime.

The City asserts that sick leave, disability leave, and injury leave are not counted in calculating overtime for AFSCME employees. While AFSCME employees receive double time for the seventh day worked, there are several restrictions on this payment. CMAGE has not included these restrictions in its proposal.

The City points out that most MCP employees do not receive any overtime at all. The City also alleges that adoption of the proposal would result in a significant increase in overtime expense. Further, the City maintains that, during the term of the expired agreement, CMAGE asked that holiday pay and jury duty be counted as hours worked for overtime calculation. The City agreed to the request of CMAGE, even though it had no obligation to do so.

Discussion and Findings

CMAGE is correct in stating that its employees are paid overtime on a less favorable basis than other City employees. However, CMAGE knew of this difference when it entered into the initial agreement with the City. This is not the same situation as, for example, the service credit pay, which the City increased for MCP employees after the CMAGE agreement became effective. CMAGE is now asking that it be placed back into a position similar to the arrangement prior to entering into the initial agreement.

While overtime provisions for MCP employees are more favorable, the fact is that most MCP employees are not eligible for overtime. Thus, it would be misleading to make a direct comparison between CMAGE and MCP employees. In this situation, it would also be misleading to make a direct comparison with AFSCME employees, who are all non supervisory personnel. It is common for supervisors either to receive no overtime or to have overtime calculated differently. CMAGE has not submitted any data pertaining to the payment of overtime for similar employees in other jurisdictions. The fact finder must conclude that overtime proposals of CMAGE should not be included in the new contract.

Recommendation

The fact finder recommends that the status quo be maintained in the calculation of overtime. This requires that Section 11.4(B) of the agreement be modified to reflect the midterm agreement of the parties to include holiday pay and jury duty as hours worked for overtime calculations. Section 11.4(B) should read as follows:

Overtime Eligibility and Pay. When any D-level employee works more than forty (40) hours in a 7-day work period, he shall be paid at a rate of one and one-half (1-1/2) times his regular straight-time hourly rate of pay for each overtime hour worked beyond forty (40) in a 7-day work period. 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 and holidays, but shall not include any other uncompensated periods or time which is compensated but not actually worked, including but not limited to vacations, sick leave, injury leave, compensatory time-off, or any other paid or unpaid leave of absence. 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.

B. Section 11.6 - Call-Back Pay

Position of the City

The City proposes the addition of language which will clarify what it believes to be a current practice with regard to call-back pay. The proposed language states that an employee is not eligible for call-back pay if the employee is informed prior to the end of the shift of an overtime assignment, even if the assignment is not contiguous with the employee's regularly assigned shift. If this language was agreed to by CMAGE, the City would agree to increase the minimum call-back pay from 3 hours at straight time to 4 hours at time and one-half.

The City argues that an employee who is informed of an overtime assignment during his shift should not be eligible for the benefit of call-back pay as the assignment is then considered to be scheduled overtime. According to the City, call-back pay is required when an employee is assigned work outside of the employee's regular shift, but only if the work has not been previously scheduled.

Position of CMAGE

CMAGE proposes that the call-back pay minimum be increased to four hours at time and one-half. It argues that all other employee groups in the City have this minimum. It also asserts that the language proposed by the City would change the meaning of the call-back pay provision. It maintains that the current language requires that the call-back minimum apply anytime that an employee works an assignment which is not contiguous to his or her normal shift.

Discussion and Findings

Call-back pay is designed to compensate an employee who has to report to work at a time that he or she is not normally scheduled. If an employee must report for work in this situation, call-back pay guarantees the employee a certain minimum number of hours of pay. At the fact-finding hearing, CMAGE asserted that the City currently pays call-back pay even if the employee is given an overtime assignment prior to the end of the regular shift, except for one or two divisions which refuse to pay call-back pay in that situation. The City asserted that the current practice is that call-back pay is not paid when employees are notified of an assignment prior to the end of a regular shift.

It is apparent that the parties have a difference of opinion over the meaning of Section 11.6 and over the manner in which the section is currently applied. The fact finder does not have sufficient information to show which position is correct. The fact finder is reluctant to add to the confusion by recommending modifications to the section. If the City is correct in its position, the language it proposes is superfluous. Conversely, if the position taken by CMAGE is correct, the adoption of the language proposed by the City would result in the loss of an employee benefit.

The parties agreed to the three hours of call-back pay at straight time when negotiating the initial agreement. At that time, MCP employees were eligible for four hours of call-back pay at time and one-half (Joint Exhibit 5). Thus, CMAGE agreed to this provision despite the fact that it was less favorable than the MCP. There is no evidence that a four-hour call-back minimum is paid to comparable employees in other jurisdictions. The fact finder notes that, in the course of a normal work week, a CMAGE D Level employee would receive premium pay for the time worked in a call-back

assignment as the employee would work more than 40 hours in the week. The fact finder will not recommend any change to Section 11.6.

Recommendation

The fact finder recommends that none of the proposals for Section 11.6 be included in the new agreement.

ARTICLE 12 - SALARIES AND COMPENSATION

A. Section 12.1 - Base Pay

Position of CMAGE

CMAGE proposes that wages be increased by 5 percent, retroactive to March 1, 1997, with additional wage increases of 5 percent on March 1, 1998, and March 1, 1999. CMAGE points out that the City has the ability to fund such an increase. It asserts that the raises are needed to prevent qualified employees from leaving the City for other employment, a fact which was verified by a public statement of the Mayor.

CMAGE notes that the last two collective bargaining agreements approved by the City in 1997 provided for wage increases of 4 percent per year. CMAGE argues that health department employees, in positions comparable to CMAGE employees, received raises of 3 percent in September 1996, and 3 percent as of March 1, 1997, which calculates to an annual increase of four and one-half percent. In addition, CMAGE employees need a raise of 6 percent by March 1998 just to regain the wage relationship which existed between CMAGE and the AFSCME unit in March 1994.

Many CMAGE employees supervise employees in the AFSCME bargaining unit. All AFSCME employees are eligible for overtime compensation. Overtime payments and other compensation which AFSCME employees receive sometimes result in employees receiving greater compensation than their supervisor. CMAGE argues that the proposed increases in base pay are necessary to alleviate some of the inequities which currently exist.

CMAGE points out that a recent survey by the Columbus Chamber of Commerce found that area employers increased salary budgets by 5.19 percent in 1997 and plan to increase salary budgets by 4.79 percent in 1998.

Position of the City

The City has proposed that base wages be increased by 3 percent, retroactive to the contract expiration date of August 24, 1997. The City also proposes to pay each employee in the CMAGE bargaining unit a cash bonus of \$350.00. The City proposes a 14 month contract expiring on October 25, 1998. The City notes that its proposed wage increase is well above the inflation rate, especially considering the cash bonus, which is equal to 1 percent of annual salary for the average employee. The inflation rate is predicted to be 2.5 percent for 1997 and has averaged 2.8 percent for the years 1994 through 1996.

The City asserts that a 14-month contract is needed in order to allow wage adjustments to be negotiated in 1998 after a comprehensive study of all job classifications is completed. The City has retained an outside consultant, the Hay Group, to conduct the study. The City anticipates that the study will be completed by August of 1998. The study will measure jobs based on skill, effort, responsibility and working conditions. It will also examine the City's compensation plans for internal equity, and will use comparative salary data to measure external competitiveness. The City asserts that it will use the data and recommendations to negotiate adjustments in compensation for CMAGE employees. The City argues that its proposal is more sensible than just granting across-the-board increases to all employees over a three-year period.

Discussion and Findings

1. Duration⁴

In order to make a recommendation on the subject of salaries and compensation, the fact finder must first determine the proper contract length. Three of the four other collective bargaining agreements between the City and other unions are of three years duration, and the other is of two years duration. The expired agreement between CMAGE and the City was in effect from November 21, 1994, until August 24, 1997, a period of about 33 months.

⁴Although duration is the subject of Article 18, it is discussed here because the issue of duration is intertwined with the wage proposals of both parties.

The City proposes a 14 month agreement with CMAGE. The City's desire to undertake a comprehensive study of job content and comparative compensation is laudable. In fact, it may be the only way to obtain accurate data to determine the proper compensation level for CMAGE employees. Certainly, many of the issues raised by both parties could best be resolved by the use of reliable comparative data in which both parties had confidence. All of the issues relating to compensation and benefits could potentially be affected by the study. Unfortunately, the City did not plan the study in time to allow the information to be used for the current negotiations. The City is now proposing a contract of extremely short duration in order to allow time for completion of the study.

Regardless of the length of the contract, the City would have the opportunity to implement wage adjustments. During the term of the expired agreement, the parties agreed to certain wage adjustments.⁵ If the Hay Group study is satisfactorily completed during the term of the collective bargaining agreement, the City has the right to request CMAGE to enter into negotiations for the purposes of negotiating adjustments based on the results of the study.

Although the City contends that the study will be completed by the fall of 1998, there is no guarantee that a final product will be available by that time. The City intends to use the Hay Group to study 622 positions in the City. Thus far, only 100 have been studied. In a project of this magnitude, it is common to have unexpected delays. After the study is completed, both parties will need an ample amount of time to review and analyze the results. It is better that both parties have plenty of time to absorb the study, as opposed to entering into negotiations immediately after the study is completed. In order for the results of the study to be effectively used as a basis for future negotiations, it is also desirable that CMAGE have some input into the design of the study, which may require additional time.

⁵For example, see CMAGE Exhibit 6. This exhibit includes Memorandum of Understanding 96-1, where the parties to increase wages in 10 classification. The parties also agreed that the City has the right to make wage adjustments for market driven reasons, operational reasons and other reasons deemed appropriate by the City. Also, see City Exhibit 23 which shows that many CMAGE employees have received a Pay Rate Increase during 1995, 1996, and 1997.

Labor negotiations can be disruptive and costly to both sides. Therefore, a longer contract is generally preferable to a shorter one. However, given the commitment of the City to pursue a comprehensive compensation study, and giving consideration to the unique composition of the bargaining unit, a contract of a shorter than three years is justified. Nevertheless, the 14-month contract proposed by the City is too short, especially considering that the contract would expire about nine and one-half months after the issuance of this fact-finding report. The fact finder will recommend an intermediate length contract of two years duration, expiring on August 23, 1999.

2. Wages

Prior to the organization of CMAGE, the employees who now make up the bargaining unit were compensated pursuant to the Management Compensation Plan (MCP). Thus, it is beneficial to consider the amount of the wage increase provided to the MCP employees. MCP employees have received annual wage increases of 3 per cent for each year from 1994 to 1997 and will receive increases of 3 percent for both 1998 and 1999 (City Exhibit 19).

In the expired CMAGE agreement, employees received across-the-board wage increases of 3 percent in March 1994⁶, May 1995 and May 1996. With regard to other bargaining units in the City, AFSCME, in a contract negotiated in 1996, received wage increases of 3 percent for 1996 and 1997, and will receive an increase of 3 percent in March 1998. The police officers received a wage increase of 3 percent for 1996, 4 percent in 1997, and will receive an increase of 4 percent in 1998. Firefighters received a wage increase of 4 percent in 1997 and will receive an additional increase of 4 percent in 1998.

While the fact finder takes notice of the increases received by the police officers and fire fighters, it is clear that the work performed by these employees is not readily comparable to that done by the CMAGE employees. This statement is not meant to suggest that the jobs of the CMAGE employees are unimportant. CMAGE employees

⁶Although the CMAGE agreement did not become effective until November 21, 1994, wage increases were made retroactive until March 27, 1994.

perform work which is essential to the orderly and efficient operation of the City. However, the work of the fire fighters and police officers is unique and is especially hazardous. By statute, fact finding recommendations on wages for all public employees must give consideration to the wages of other employees doing the same work in comparable jurisdictions. In some cases, the comparisons made to other jurisdictions may require that higher wage increases be recommended for particular groups of employees, such as police officers and fire fighters.

Unlike police officers, fire fighters, and most other groups of public employees, there is no bargaining unit comparable to the CMAGE employees. In most cities, employees in classifications similar to those held by CMAGE employees are not in a bargaining unit. CMAGE has presented statistical information on groups of employees in the private sector with similar job classifications (CMAGE Exhibit A, Tab 3). Primarily due to differences in the compensation structure, including retirement benefits, it is difficult to draw any conclusions from the data. While this information shows some disparity in compensation levels between CMAGE employees and private sector employees, CMAGE has not proposed any wage adjustments for specific job classifications. CMAGE also presented some information on non-bargaining unit employees in other Ohio cities. Wage increases in 1996 ranged from 2.5 percent to 3.5 percent. In 1997, they ranged from 2.75 percent to 4.0 percent.

The employees in the CMAGE unit can be considered most comparable to those covered by the MCP. The wages of the employees represented by AFSCME must also be considered because of the fact that many CMAGE employees directly supervise AFSCME employees. It is quite clear that these employees are receiving wage increases of 3 percent per year. The increase in the CPI, as of September 1997, was at a 2.2 per cent annual rate (City Exhibit 14). According to a survey by the Bureau of National Affairs, the median wage increase for all industries in collectively bargained agreements for the first 40 weeks of 1997 has been 3 percent (City Exhibit 16).

The fact finder must conclude that a raise of 3 percent per year is most appropriate for CMAGE employees. It is above the current inflation rate and is in line with the raises received by other City employees and by comparable employees in other jurisdictions.

Recommendation

The fact finder will recommend that the parties enter into a two-year agreement, effective August 24, 1997 and expiring August 23, 1999. Based upon the considerations mandated by statute, the fact finder will recommend an across-the-board increase in base pay of 3 per cent, retroactive to August 24, 1997⁷ and an additional 3 per cent effective August 23, 1998.

B. Section 12.1 - Merit Pay

Position of CMAGE

CMAGE proposes a plan for a merit pay system. CMAGE proposes that the City be required to annually evaluate employees assigned to a classification with variable pay ranges and/or pay ranges 30 or above. If the employee is not given a merit pay increase, the reason(s) for the denial are to be provided to the employee in writing. The City agreed to this provision in the contract with AFSCME and also has a merit pay plan in place for the MCP employees. CMAGE points out that the proposal does not require the City to grant any merit increases, but simply requires an evaluation by the department head.

Position of the City

The City opposes the proposal for the merit pay system. The City asserts that it already is able to provide wage increases to employees on an individual basis by the use of a Pay Rate Increase (PRI) as provided in Memorandum of Understanding 96-1. Many CMAGE employees have received a PRI during the term of the expired agreement. The City contends that any merit system should not be implemented until after the completion of the Hay Group study.

Discussion and Findings

Both parties acknowledge that there are problems with the current compensation system. The City has commissioned a comprehensive study in an attempt to resolve

⁷Section 12.1(A) of the expired agreement provides that pay adjustments in the successor agreement cannot be effective prior to August 24, 1997(Joint Exhibit 1).

the problem. Unfortunately, the study was not completed in time to be of assistance in these negotiations. CMAGE asserts that the institution of a merit pay program could help to improve the situation without waiting for the results of the study.

Although the City contends that problems can be addressed by PRI's, Memorandum of Understanding 96-1 restricts the type of situation in which pay adjustments can be made. Even though the memorandum gives the City the right to make pay adjustments "deemed appropriate," the concept of merit pay is not embodied in the PRI process. The tenor of the memorandum is to allow for changes in compensation due to operational considerations and market conditions.

The City has agreed to a merit pay plan with the AFSCME unit. It is inconsistent to allow merit pay to be provided to subordinate employees while denying the opportunity for merit pay to supervisory employees. Like the proposal of CMAGE, the language in the AFSCME agreement does not require the City to grant any merit pay increases. The fact finder will recommend that language similar to the AFSCME agreement, which requires a review for merit pay every two years, be adopted.

Recommendation

The fact finder recommends that the following provision be included in the new CMAGE agreement:

The City shall institute a merit pay review system, within 120 days of the City Council's approval of this contract, for bargaining unit employees assigned to a classification with variable pay ranges and/or pay ranges 30 and above. Each employee shall be evaluated once every two years (beginning in 1998) based on the employee's classification date. If an employee is denied a merit pay increase, the employee shall be provided the reason(s) for such denial in writing.

C. Section 12.5 - Shift Differential

Position of CMAGE

CMAGE is seeking an increase in the shift differential of 10 cents per hour. Under the expired agreement, employees receive a shift differential of 37 cents per hour for second shift and 45 cents per hour for third and rotating shifts. CMAGE contends that the current differentials are inadequate and are not high enough to encourage people to work undesirable shifts. CMAGE states that the marketplace

identifies night differentials of 10 percent, while the current differentials are less than 5 percent.

Position of the City

The City asserts that the current shift differential is adequate. The differential is equal to or greater than that received by other non-uniformed bargaining unit employees in the City. Most non-bargaining unit employees receive no shift differential. The City argues that this request is unsupported by either internal or external data.

Discussion and Findings

The evidence shows that the current shift differential paid to CMAGE employees is the same as that paid to both the AFSCME employees and MCP employees. It is higher than the differential paid to OLC employees. The current rate is slightly higher than the average shift differential of 36 cents and 43 cents paid to employees in other large cities represented by AFSCME (City Exhibit 34). While the CMAGE differential is lower than that paid to police officers, the jobs are not directly comparable. The evidence does not justify an increase in shift differential at this time.

Recommendation

The fact finder recommends that the proposal of CMAGE for Section 12.5 not be included in the new agreement.

D. Section 12.6 - Service Credit

Position of CMAGE

CMAGE proposes increasing the service credit by \$300.00 in each category. The service credit is paid annually in a lump sum to employees. The amount varies depending upon length of continuous service. CMAGE points out that the MCP employees received a \$250.00 increase one year ago, and the Health Department employees received a similar increase when they were removed from the CMAGE bargaining unit following decertification in September 1997. The police officers also

received an increase, making their service pay more than twice that of the CMAGE employees.

Position of the City

The City asserts that the service credit increase is unwarranted because the employees are paid an amount equal to the AFSCME employees. It argues that CMAGE is engaging in "cherry-picking" by selecting the best of both the AFSCME agreement and the MCP. The proposal of CMAGE would result in CMAGE receiving a higher rate of service credit than any other non-safety force unit. According to the City, CMAGE employees currently are paid a higher rate of service credit than comparable employees in most other Ohio cities. The City contends that CMAGE has not submitted sufficient data to support its position.

Discussion and Findings

A CMAGE employee, under the terms of the expired agreement, receives \$250.00 less per year than an MCP employee with the same amount of service. A CMAGE employee with five years of service is paid \$200.00, while an MCP employee with the same amount of service is paid \$450.00. These amounts gradually increase so that, with 25 years of service credit, the CMAGE employee receives \$600.00 per year while the MCP employee receives \$850.00.

Although AFSCME employees are currently entitled to the same amount of service credit as CMAGE, an adjustment is warranted based on the amount of the service credit paid to the MCP. It seems apparent that CMAGE employees are most similar to employees in the MCP as they were part of the MCP prior to the certification of CMAGE. CMAGE employees are also similar to Health Department employees who were formerly part of the CMAGE bargaining unit. The fact finder will recommend that the service credit be increased by \$250.00 per year at each level. This provision will be retroactive to August 24, 1997, so that employees who were entitled to service credit pay will receive an additional \$250.00 for the December 1997 payment.

Recommendation

The fact finder recommends that Section 12.6 be modified to reflect the following payment schedule:

Service Credit Payment Schedule

More than 5 years of continuous service	\$450
More than 8 years of continuous service	\$550
More than 14 years of continuous service	\$650
More than 20 years of continuous service	\$750
More than 25 years of continuous service	\$850

E. Section 12.7 - Tuition Reimbursement

Position of the City

The City proposes language that would require employees to repay the cost of voluntary training if the cost exceeds \$1500.00 and the employee leaves the employment of the City within two years after receiving the training. The City claims that some employees might obtain expensive training paid for by the City, and then leave to go to work for another employer. If the City pays for training, it should receive the benefit, at least for a short time, or the employee should reimburse the City for the training cost. The City maintains that the two year time period is relatively short, so as not to place an undue burden on employees.

Position of CMAGE

CMAGE is opposed to this proposal. The repayment requirement is not contained in any other collective bargaining agreements nor is it a requirement for MCP employees. CMAGE points out that employees are currently required to reimburse the City for tuition for college courses if they leave the employment of the City within two or three years after the completion of a course, depending on the course of study pursued. CMAGE argues that the proposal would result in employees turning down opportunities for specialized training and for continuing professional education.

Discussion and Findings

The City's proposal would extend the reimbursement requirement, currently in place for college tuition, to the costs of all voluntary training courses. While college courses may provide no direct benefit to the employer, training is likely to be directly applicable to an employee's job. The fact finder understands the City's reluctance to pay for training which is used to benefit another employer. However, this is a concept which should be discussed by both parties so that a workable procedure can be developed. The City does not require any other employees to repay the costs of training. Thus, the fact finder will not recommend this proposal.

Recommendation

The fact finder recommends that the proposal of the City for Section 12.7 not be included in the new agreement.

ARTICLE 13 - INSURANCE

Position of the City

The City has proposed several changes to the insurance plan and CMAGE has also submitted some proposed changes. The City proposes the following changes:

1. Change the method of payment for routine medical examinations to a maximum reimbursement per year of \$150.00, or \$300.00, for a family from the current rate of \$35.00 per visit, up to 3 visits per year for an individual, or 9 visits per family;
2. Payment for stress tests must be approved by the plan administrator as medically necessary;
3. Any changes made to the PPO provider network will apply;
4. In the event that the employee benefit booklet and contract are silent, the guidelines of the plan administrator shall prevail;

5. Change the amount charged to a CMAGE employee married to non-uniformed City employee who elects life insurance coverage only, to \$5.50 per month from \$15.00 per month.

The City asserts that the changes it proposes are modest, and are not meant to diminish the level of coverage to employees. The City has instituted and negotiated cost containment measures for health insurance since 1992, when health insurance costs were \$24.5 million. The cost was reduced each year until reaching a low of \$18 million in 1995. However, costs increased to \$20.5 million in 1996 (City Exhibit 38). According to the City, much of the data submitted by CMAGE is based upon one or two favorable years in terms of costs. Health insurance decisions cannot be properly made based on one or two years of data. For example, in 1994, the expense for CMAGE employees was greater than for any other major employee group.⁸

Position of CMAGE

CMAGE proposes the following changes to the insurance article:

1. Decrease the annual out-of-pocket maximum to \$500.00 (single), \$800.00 (family), from the current \$800.00/\$1600.00;
2. Reduce the monthly employee premium contribution to \$10.00 (single), \$20.00(family) from the current \$15.00/\$30.00;
3. Change coverage to provide for annual mammogram and prostate examinations for persons age 40 or over;
4. Increase orthodontia limit to \$2500.00 per individual from \$1,000.00;
5. Change maximum mail order prescription drug benefit to 90 days from 60 days;
6. Allow an employee not electing health benefits to receive all other group insurance benefits for \$5.50 per month.

⁸See CMAGE Exhibit 17. The 1994 insurance expense for CMAGE employees was \$5,864,672, for an average per employee of \$4826. In 1995, the same expense was \$3,916,123, for an average of \$3456.

CMAGE contends that its proposals simply provide the same protections to CMAGE families that the City provides to other employees. CMAGE notes that the City reduced cost of providing benefits to CMAGE employees from \$4.1 million in 1994 to \$2.3 million in 1995 and remained at \$2.3 million in 1996. CMAGE asserts that the City spends less on benefits for CMAGE employees because CMAGE employees must assume more of the cost themselves. For example, AFSCME employees, police officers, and firefighters all have family out-of-pocket maximums of \$800.00, whereas CMAGE's maximum is \$1600.00. The City's 1997 funding level for benefits for CMAGE employees is \$313.84, which is lower than the five other employee groups, which have funding rates ranging from \$356.89 (AFSCME and OLC) to \$402.89 (police officers) (CMAGE Exhibit 17).

Discussion and Findings

Both parties submitted cost data for insurance for all City employees and the cost for individual groups of employees, such as MCP, AFSCME and CMAGE. Depending on the year or period selected, insurance expenses for CMAGE employees were either lesser or greater than other employee groups.

While the 1997 City funding rates for CMAGE are lower than the other employee groups, the cause of lower funding rate is not known. While a lower level of benefits can result in a lower funding rate, the rate may also be lowered as a result of a better claims experience. The funding rate may be reduced because the cost containment measures adopted for one group proved to be more effective than those used for another group.

The current insurance program was negotiated by the parties. Presumably, each party was able to include the features and benefits which it considered to be most important. Items such as frequency of mammograms and prostate examinations, approval for stress tests, and prescription plan details, are best negotiated by the parties with the use of current medical information, and with consideration given to the needs of the particular employee group. In addition, changes in administrative procedures and provider network procedures should be negotiated by the parties, who have detailed knowledge of the operation of the health insurance system.

A review of CMAGE Exhibit A, Tab 6, shows that CMAGE has the least favorable coverage among major employee groups when comparing out-of-pocket maximums, employee premiums, and orthodontia maximums. CMAGE employees pay the highest premium, which is equal to AFSCME. However, AFSCME employees have an out-of-pocket maximum of \$500 (single) and \$800 (family) while CMAGE employees are required to pay out-of-pocket expenses of \$800/\$1600. MCP employees have the same out-of-pocket maximums as CMAGE, but have a monthly premium of \$10 (single), \$20 (family), compared with CMAGE premiums of \$15/\$30.

In order to provide more equity, the fact finder will recommend that, effective February 1, 1988, CMAGE employees pay a monthly premium of \$10.00 for single coverage and \$20.00 for family coverage, as the MCP employees pay.

The City's proposal to change the method of payment for routine medical examinations is reasonable. A routine medical examination, such as a physical, is likely to cost more than \$35.00. The adoption of the proposal may thus encourage more employees to obtain regular physical examinations. As the changes in premium were recommended by the fact finder based on a comparison to other employee groups, it is logical to also implement this change, which has been instituted in other units.

The City proposed lowering the amount of the premium charged to a CMAGE employee married to non-uniformed City employee who elects life insurance coverage only to \$5.50 per month from \$15.00 per month. The proposal of CMAGE on this issue is to extend all insurance benefits, other than health, to any CMAGE employee who elects not to obtain health insurance under the collective bargaining agreement, for a cost of \$5.50 per month. The CMAGE proposal is much broader than the City's proposal as CMAGE proposes extending all insurance benefits, not just life insurance. However, an employee who wishes to also select dental, drug and vision coverage can obtain this additional coverage by enrolling in the health insurance plan for a modest additional cost. Thus, these additional coverages need not be offered as an option.

The City has not provided a sufficient rationale for limiting life insurance availability to only those employees whose spouses are employed by the City. Thus, the life insurance only option should be made available to all employees.

Recommendation

The fact finder recommends that the following changes be made in Article 13.

Section 13.1(A)(3) will be added to the agreement as follows:

Effective February 1, 1998, the plan will eliminate the current \$35 per routine visit allowance. Instead, the plan will cover routine physicals, exams and immunizations up to a maximum of \$150.00 per individual for covered persons age nine and over; a \$300.00 family maximum, subject to deductibles, coinsurance, and out-of-pocket maximums will apply.

Section 13.1(C) will be deleted and Section 13.2 will provide as follows:

Section 13.2. Cost. The employee will pay each month \$15.00 of the cost of single and \$30.00 of the cost of family group coverages for medical, dental, drug, vision insurance, and employee life. These amounts shall be reduced to \$10.00 for single and to \$20.00 for family group insurances effective February 1, 1998. The employees' portion of insurance coverage will be deducted from pay checks as is currently practiced.

If a CMAGE employee elects individual life insurance coverage only, the pre-existing monthly single employee life insurance premium rate to be charged to the employee shall be changed to five dollars and fifty cents (\$5.50), effective March 1, 1998 when enrolled during Open Enrollment month. Such premiums shall be paid through an automatic payroll deduction.

ARTICLE 14 - GENERAL PROVISIONS

Section 14.8 - Disciplinary Procedures

A. Probationary and Unclassified Employees

Position of the City

The City proposes that probationary and unclassified employees no longer be afforded the right to appeal disciplinary actions or discharge to the Civil Service Commission. Currently, the City charter does not give the Civil Service Commission jurisdiction over employees who are probationary or unclassified. The current collective bargaining agreement is thus in conflict with the charter, according to the City. The collective bargaining agreement should be changed so that it is consistent with the charter.

Position of CMAGE

CMAGE is opposed to the City's proposal to deny probationary and unclassified employees the opportunity to appeal disciplinary actions. CMAGE asserts that these employees are part of the bargaining unit and are entitled to be represented by CMAGE. Even though the City charter does not allow these employees to appeal to the Civil Service Commission, Chapter 4117 of the Ohio Revised Code provides they are entitled to any rights which are contained in a collective bargaining agreement.

Discussion and Findings

In the negotiations for the prior contract, the City agreed to allow probationary and unclassified employees the same rights as other members of the bargaining unit. While this provision may present some problems with respect to the charter and the jurisdiction of the Civil Service Commission, the City's proposal contains no language which would protect the rights which these employees have obtained through the collective bargaining process. Under these circumstances, the fact finder believes that the current language should be maintained.

Recommendation

The fact finder recommends that the proposal of the City for Section 14.8 not be included in the new agreement.

B. Disciplinary Appeal Procedure

Position of CMAGE

CMAGE proposes that members of the bargaining unit be accorded the right to grieve and arbitrate disciplinary matters. CMAGE points out that every other collective bargaining agreement with the City provides for the arbitration of disciplinary matters. CMAGE asserts that the Civil Service Commission, whose members are appointed by the mayor, cannot be viewed as a neutral body.

Position of the City

The City is opposed to a CMAGE proposal to allow employees to challenge disciplinary actions through either the grievance procedure or the Civil Service Commission. The City argues that CMAGE has not shown that an appeal of disciplinary actions to arbitration is necessary. The City contends that the current practice, which allows for the appeal of disciplinary matters to the Civil Service Commission, is fair to employees. The City has presented evidence showing that the commission often rules in favor of employees. In addition, arbitration would add additional costs to the disciplinary appeals process.

Discussion and Findings

In the prior negotiations, CMAGE agreed that disciplinary actions would be appealable to the Civil Service Commission and would not be subject to review pursuant to the grievance and arbitration procedure. At the time of the previous negotiations, all of the other collective bargaining agreements with the City provided for the arbitration of disciplinary matters, but CMAGE agreed to the use of the Civil Service Commission. The evidence does not support the need for a change in this previously negotiated procedure. The statistical information presented in City Exhibit 41 shows that the commission is not reluctant to modify or disaffirm disciplinary actions.⁹

Recommendation

The fact finder recommends that the language proposed by CMAGE for Section 14.8 not be included in the new agreement.

NEW ARTICLE - PART-TIME EMPLOYEES

Position of CMAGE

CMAGE proposes that part-time employees who are regularly scheduled to work 30 or more hours per week receive group insurance and holiday benefits as well as 75 percent of sick leave, injury leave, and vacation benefits. CMAGE notes that 60

⁹ Of the 43 cases actually heard during 1994, 1995, and 1996, the commission either modified or disaffirmed the action of the City in 23 cases.

members of the bargaining unit work part-time. It asserts that some of these employees are being required to work as many as 39 hours per week without benefits. CMAGE contends that the cost of providing these benefits would not be significant in terms of the City's budget. CMAGE argues that many other collective bargaining agreements provide some benefits for persons who work 20 hours per week.

Position of the City

The City opposes this proposal. It asserts that the City is not abusing these employees because most of the people who are part-time employees do not want to work full-time. Thirty-four of the part-time employees are law students who work in the office of the City Attorney. The only employees who work 39 hours per week are in positions in the Parks and Recreation Department under a grant which limits the number of hours of work to 39 per week. The City points out that no other part-time employees of the City receive any benefits. Further, the City already provides a benefit to part-time employees in the form of a pension pick-up of 6 percent.

Discussion and Findings

CMAGE is proposing a change in the status quo on this issue. The expired contract does not provide any benefits to part-time employees, except for the pension pick-up. Although CMAGE asserts that many contracts provide benefits to part-time employees, no specific evidence of the practice as it relates to comparable employees has been offered. Benefits are not paid to part-time employees in any of the other employee groups in the City. Thus, the fact finder must conclude that there is insufficient evidence to support the inclusion of this proposal in the new collective bargaining agreement.

Recommendation

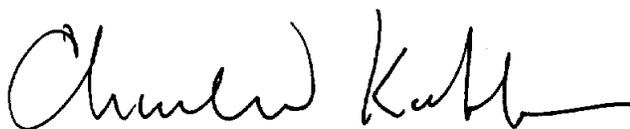
The fact finder does not recommend the adoption of the CMAGE proposal to provide benefits to part-time employees working 30 hours or more per week.

ARTICLE 18 - DURATION

Recommendation

For the reasons presented in the discussion of Section 12.1, the fact finder recommends a two-year agreement, effective from August 24, 1997, to August 23, 1999.

The above stated recommendations are respectfully submitted to the parties for their consideration.

A handwritten signature in black ink, appearing to read "Charles W. Kohler", with a horizontal line underneath it.

Charles W. Kohler, Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 7th day of January, 1998, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon William C. Moul, Esq., Thompson, Hine and Flory LLP, 10 West Broad Street, Columbus, Ohio 43215; and Ronald G. Linville, Esq., Baker and Hostetler, 65 East State Street, Suite 2100, Columbus, Ohio 43215; each by Federal Express Overnight Delivery; and upon G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.

A handwritten signature in black ink, appearing to read "Charles W. Kohler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charles W. Kohler, Fact Finder