INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION



Work Session: Personnel Law for the Public Employer

Title: Breaking the Wage Increase Cycle: Collective Bargaining in Difficult Economic Times

by
Presenter: Ronald G. Linville

Presenter's Title: Partner and Chair, Labor & Employment Group

Presenter's Office: Baker & Hostetler LLP

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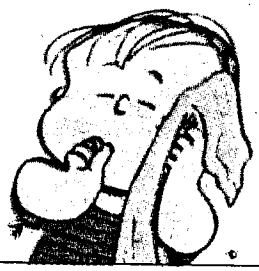

New books look at Peanuts, creator | B1



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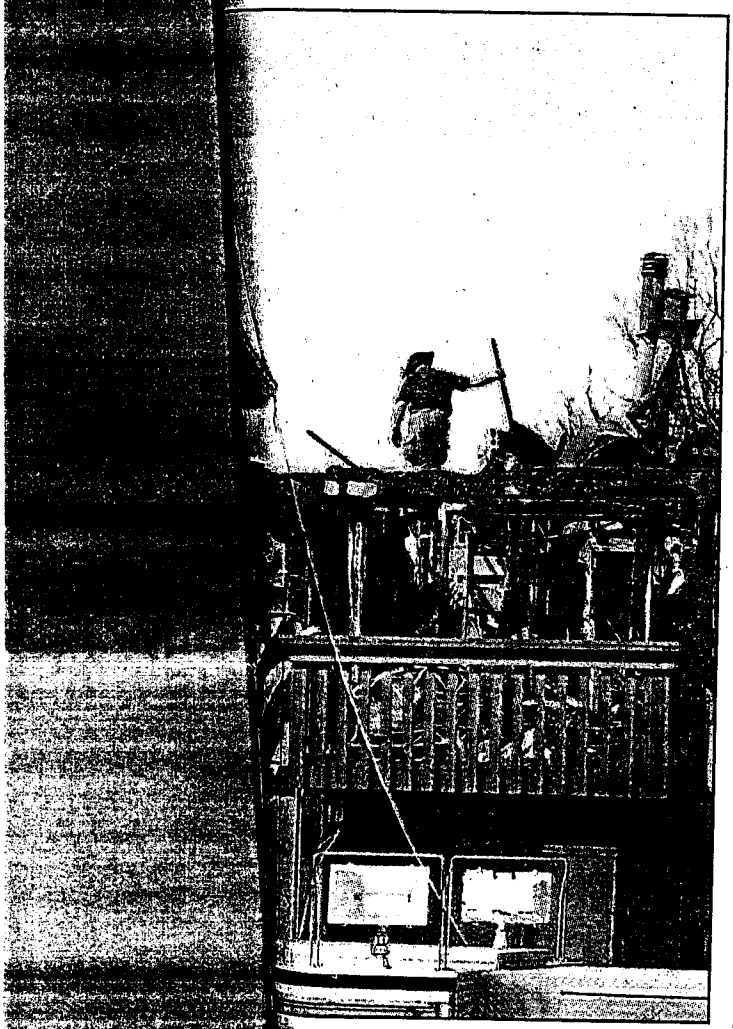

ERIC ALBRECHT | DISPATCH
terday. She was killed Sunday.

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▶ Official questions staffing after firefighters are hurt | C1

gulfed. Everything we worked hard for, everything we can't replace, is gone," said Joe May, 22,

City wins police-pact arbitration

Ruling will produce $8.7 million savings

By Mark Ferenchik
THE COLUMBUS DISPATCH

A labor arbitrator sided with Columbus yesterday, agreeing with the city's offer of lower pay increases for police officers.

Compared with what the union was seeking, the city will save $8.7 million over the three-year contract, which runs through Dec. 8, 2005.

▶ Four firefighters hurt in blaze; minimum staffing cited as factor | C1

Arbitrator Michael A. Paolucci, brought in last year when the city and union could not agree, said the city's lagging finances made 4 percent pay raises in each of the three contract years "plainly wrong."

Though officers had received 4 percent raises for several years, Paolucci backed the city's plan to pay 2 percent, 3 percent and 4 percent, respectively, in each of the three years of the contract. He also agreed with the city that officers should pay higher health-care premiums.

The decision signals that other unions, including the firefighters', may have a tough time justifying higher raises in negotiations this year.

City officials feared in recent weeks that Paolucci would give the union the 4 percent annual raises a fact-finder had recommended last year. That would have cost the city an additional $4.5 million this year, which the city finance director said could have meant more layoffs of other city employees.

Out-of-pocket health-insurance costs will nearly triple for single officers and increase sevenfold for those with families. All officers now pay $10 a month. By December, single officers will pay $27.45 a month; those with families, $71.40 a month. The union wanted a cap of $25 for single coverage and $35 for family coverage.

The arbitrator's decision, which is binding, was fair under the circumstances, Mayor

See POLICE Page A2

soever.

Also yesterday, a Spanish judge charged two more suspects in the Madrid bombings, bringing the total number of people charged in the case to 14, court officials said.

Judge Juan del Olmo charged Basel Ghayoun, a Syrian, with mass killings and belonging to a terrorist organization. The judge also charged Morrocan Hamed Ahmidam with collaborating with a terrorist organization in connection with the bombings that killed at least 190 people.

edly shooting at a house on Brown Road; that's the charge being heard today. But he has been named by authorities as a suspect in up to two dozen shootings, including the killing

nary hearing.

If the case goes to trial, Dressler said, McCoy's mental illness, described by his mother as paranoid schizophrenia, would be a difficult card for the

A change of venue also could be granted if a judge decides excessive publicity has put the defense at an unfair disadvantage.

bcadwallader@dispatch.com

bombs and instructions on how to make them, a Kalashnikov rifle, two pistols, ammunition and extremist Islamic literature, he said.

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The Columbus Dispatch

Coming this week

WEDNESDAY: It's getting harder to find people who remember when there was no color TV. Accent notes the 50th anniversary of the tube's blossoming in more than black and white.

THURSDAY: Looking for some springtime activity for the whole family? Weekender has a few fun ideas.

THURSDAY: One never knows where someone who goes through the Columbus College of Art and Design might wind up. The Arts looks at an alumni exhibit that emphasizes graduates' diverse careers.

POLICE

FROM PAGE A1

Michael B. Coleman said yesterday. "I wanted to make sure they did get a raise.

"We respect our officers. These are tough times."

Union officials were floored.

"This award just kicks officers in the gut," said Bob Sauter, an attorney for the union.

Bill Capretta, president of Fraternal Order of Police Capital City Lodge No. 9, said angry officers were calling him all day.

"They're just kind of mad at everybody right now," Capretta said.

The union represents 1,800 officers through the rank of commander.

The 3 percent raises will be broken up into two 1.5 percent raises, and the 4 percent into two 2 percent increases.

Union members haven't had a raise since the old contract expired. The new contract is retroactive to Dec. 9, 2002, when the old one expired. The 2 percent raise will be retroactive to that date and the first 1.5 percent to Dec. 7, 2003.

Under the new contract:

- A starting police officer will make $35,303 in the first year. By the end of the contract, starting pay will be $37,743.
- A sergeant will make $63,775. That will go to $68,358 by the end of the contract.
- A lieutenant's pay will increase from $75,232 in the contract's first year to $80,642 in the third year.

A fact-finder had sided with the union in July. But the City Council rejected the recommendation after Coleman asked members to turn it down.

In disagreeing with the fact-finder, Paolucci wrote, "The economy and the city's finances are suffering and need relief."

The city's two main witnesses during the hearings were Auditor Hugh J. Dorrian and Finance Director Joel S. Taylor.

City officials presented reports estimating that yearly growth in the city's income taxes would average 0.9 percent from 2001 through 2004, after three decades of much stronger growth.

The union had argued that Columbus had $120 million in its special income-tax fund, which the city uses to pay off bonds, and could protect its bond rating and cover the money taken out to pay for police raises by having the City Council enact a property tax.

Jack Reall, president of the International Association of Fire Fighters Local 67, said the arbitrator's decision provides a benchmark for his union, which represents about 1,500 firefighters and is to begin negotiations next month.

"We were obviously hoping it would come back in their favor," Reall said of the police union.

Comparing offers

A labor arbitrator has sided with Columbus in its contract negotiations with the city's police union. Pay increases and insurance premiums are retroactive to Dec. 9, 2002. How the city's offer stacked up against the union's proposal:

▶ Raises	CITY	UNION
First year	2 percent	4 percent
Second year	3 percent	4 percent
Third year	4 percent	4 percent
▶ Health-insurance monthly payments		
	STARTING FEB 1, 2004: $22.25 single; $57.75 family	STARTING AUG. 4, 2004: $15 single; $25 family
	STARTING DEC. 1, 2004: $27.45 single, $71.40 family	STARTING AUG. 1, 2005: $25 single, $35 family
▶ Three-year cost		
	$21 million	$29.7 million

Source: arbitrator's decision; city of Columbus

THE COLUMBUS DISPATCH

The Coleman administration recently gave administrators and other nonunion workers 2 percent pay raises.

Sauter said the decision will hurt the city's ability to attract good officers because some suburban officers are receiving 4 percent raises.

"Columbus becomes a second-class city if the wages awarded by the conciliator become a pattern in the future."

But Coleman said Columbus wages remain competitive. Columbus officials told the arbitrator that even with the 2 percent raise, Columbus officers will earn $6,000 more a year than Cincinnati officers and $11,000 more than Cleveland officers.

Taylor said the city budgeted for the package it presented and had no budget to deal with a union victory. Because of budget problems, the city laid off 34 employees this year and has put two others on notice.

No uniformed officers were furloughed.

Dispatch *reporter Suzanne Hoholik contributed to this story.*

mferenchik@dispatch.com

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IN THE MATTER

OF

CONCILIATION
(Last Best Offer)

BETWEEN

CITY OF COLUMBUS, OHIO

AND

FRATERNAL ORDER OF POLICE,
CAPITAL CITY LODGE NO. 9

Issue:	Last Best Offer - Conciliation
Dates of Hearing:	October 9, 14, 22; November 13, and 19, 2003
Location:	Various Sites; City of Columbus Facilities
Case Nos:	02-MED-10-1092 & 1093
Date of Award:	March 29, 2004

Finding: The findings are too numerous to list here.
A full discussion of each issue is more fully set forth below.

Union Representative:
Robert W. Sauter
Cloppert, Latanick, Sauter & Washburn
225 East Broad Street
Columbus, Ohio 43215

City Representative:
Ronald G. Linville
Baker & Hostetler, LLP
65 East State Street, Suite 2100
Columbus, Ohio 43215

OPINION AND AWARD

Michael A. Paolucci
Conciliator

Administration

By letter dated August 13, 2003, from Dale A. Zimmer, the Administrator with the Bureau of Mediation at the State Employment Relations Board (SERB), the undersigned was informed of his designation to serve as Conciliator in a procedure as mandated by R.C. 4117.01, et al., more specifically R.C. 4117.14(D)(1). On October 9, 14, 22 and November 13, and 19, 2003, hearings went forward in which the Parties presented testimony and documentary evidence in support of positions taken. The record was closed upon the submission of post-hearing briefs and the matter is now ready for final, issue by issue, resolution by the undersigned who shall choose one of either Parties' final last best offers for each said issue.

Resolved Issues

The following issues were resolved prior to Conciliation. They are included here for reference as resolved issues:

1. Article 6.6 – Release Time;
2. Article 15 - Limited Promotional Appointments;
3. Article 25.2 - Uniform Maintenance Allowance;
4. Article 27.4 - Maximum accrual of Vacation Hours;
5. Article 20.2 - Contribution to Pension Fund (Pension pickup);
6. Articles 35.1 (A)(2) and (3) - Health Insurance, Pre-existing conditions and drug deductibles;
7. Articles 35.1 (B)(1) through (3) – Health Insurance, Drug Co-Pays.

Unresolved Issues presented

The following four (4) issues were presented for conciliation:

1. Wages - Article 20, § 20.1
2. Shift Differential - Article 23, § 23.1
3. Longevity Pay - Article 23, § 24.1
4. Health Insurance - Article 35, §§ 35.1, 35.11

* * *

Under R.C. 4117.14(G)(7), a Conciliator is required to give consideration to certain factors in choosing between the Parties last best offers, on an issue-by-issue basis. That statute reads as follows:

> After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:
>
> (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 remaining unresolved issues are addressed giving consideration to all of the necessary statutory elements.

Factual Background

The City is the capital of the State of Ohio and is one of the largest cities in the state. Its police are represented by the Union. There are two (2) bargaining units that are subject to this Conciliation - approximately 1,500 Patrol Officers and approximately 300 Supervisors (Sergeants, Lieutenants, and Commanders). The Parties have had a long-term relationship that pre-dates the Public Employee Collective Bargaining law that mandates this process. Both bargaining units were "deemed certified" in 1985. The Parties first Agreement was dated 1976 through 1978; and it was followed by successive Agreements typically ending December. Prior to this round of bargaining, the Parties have only entered the Factfinding process three (3) times: over promotions in 1987; past practices in 1993; and a tentative agreement in 1999 for the police officers only. This is the first time Conciliation has been used by the Parties.

The focus of the dispute is the City's financial condition and its ability to pay numerous economic benefits to the bargaining unit members. Extensive evidence was submitted through five (5) days of conciliation; including expert witnesses from both sides. The expired Agreement was dated December 11, 1999 through December 8, 2002. The Parties began negotiations for a new Agreement on October 22, 2002. Between October 2002, and March 2003, the Parties met on average twice per week to negotiate a new Agreement. Factfinder Robert Stein was appointed by mutual selection, and he acted both as Mediator and Factfinder. As mediator, Stein met seven (7) times with the Parties, and helped them reach a tentative agreement on all but nine (9) issues.

The Parties met for Factfinding on April 30 and June 3, 2003. A Factfinder's Report was issued on July 23, 2003. The Factfinding Report made recommendations on eight (8) issues, of these six (6) were economic. Of the six (6), the Factfinder found in favor of the City on two (2) and made compromise recommendations on the remaining four (4). While both bargaining units accepted the

Factfinder's recommendations on each issue, the City rejected same by vote of City Council on July 28, 2003. That vote was 5-1 against; was consistent with the urging of the Mayor; and had one vote in favor that was cast by the Council Public Safety Chair. The four (4) compromise recommendations of the Factfinder were thus rejected by the City and have been presented to the undersigned for a final, last-best-offer decision. At conciliation, the Union's position on the four (4) economic issues mirrored the Factfinder's Recommendations; the City's were modifications of same.

The City asserted that due to the lengthy and detailed mediation, the Factfinding hearings did not have the amount of expert witnesses and economic evidence that was presented hereunder. In contrast, the Union claimed that the Factfinder, as a party to the mediation, was in the best position to fashion an over-all compromise which the Parties were unable to reach through bargaining. The Union also believes its position is stronger than the City's because it adopted the Factfinder's recommendations in total even where it does not benefit the Union. It cites the portions of the Factfinder's report where the loss of a market wage is recommended; where increased health care and prescription costs are given; and where only minimal gains in longevity and shift differential are granted. It asks that its acceptance of that report, even though it is not completely beneficial to it, be considered.

In the five (5) Conciliation Hearings, expert witnesses for both sides testified; a court reporter took a record; and volumes of evidence were submitted. To bolster its claim that the Factfinding report should be given little weight, the City pointed out that its main witness at Conciliation, City Auditor Hugh Dorrian, did not appear at Factfinding. The City did not even submit evidence during Factfinding regarding pay at comparable jurisdictions. In order to discuss the Parties position, it is necessary to first set forth the process that the City uses to reach its budget.

The two (2) main witnesses for the City were the City Auditor, Hugh Dorrian, and the City's Finance Director, Joel Taylor. Dorrian has been the City Auditor since 1969. The City is a Charter City, which, under the state law that permits the existence of such an entity, requires it to follow its Charter for rules on how it is managed. Only where the Charter is silent does the statutory rules have an impact. The City's Charter mandates that it have a balanced budget, and all elected officials are bound by that mandate.

The City Auditor is an elected position and as such is independent from the Mayor's office. Of the myriad duties the City Auditor has, the one most pertinent here is the setting of spending limits. The City Auditor is charged with reviewing the City's financial condition, and then setting a limit for the amount of money that the City can spend. This dollar amount is determinative and must not be exceeded by the City in devising a budget. As a Charter City, the City may only spend an amount equal to or less than the revenue estimates as made by the City Auditor. Once the Auditor's estimate is received, it is Taylor's job as City Finance Director to devise a budget around those limits.

The City's revenues are kept in different funds depending on the source of the money, the use for the money, and other rules that apply to municipal finance. The General Fund is the City's chief operating fund, and it is the source from which all police expenses are paid. Because it is where the wages and other benefits are paid from, it is logical to discuss the General Fund first.

General Fund

The expenses of the safety forces comprise about two-thirds (2/3^{rds}) of the General Fund expenditures. The General Fund is made of different income streams. The largest and most important is the City income tax which provides the General Fund with between 60% and 65% of its

total. There are other sources of income to the General Fund, each with a different percentage contribution. The revenue streams, with approximate percentages, are as follows:

Local Government Funds (Shared Revenue) – 10%
Property Tax – 7.5%
Investment Earnings – 5%
Charges for Services – 5%
Fines, License & Permits – 5%

Taylor testified that with decreases in the non-income tax sources, income tax has begun to approach two-thirds (66.66%) of the General Fund's resources.

The City's income tax began in1948, and until recently has steadily increased. The City provided evidence that the income tax, with few exceptions, has seen steady, consistent increases. The historic year-to-year growth rate in the income tax collections hovers well above 4.5%. (City Exhibit – 12). The economic analysis shows some years with remarkable income tax growth – highs of 36.5% and 15.3% in years 1983 and 1984; large averages of 8.7% over the years 1974-1985; and until 2001, growth rates well above 6%. In 2001, the growth rate took a sudden downward turn to 3.5%. From 2001 through 2004, the growth rate is estimated to average 0.9%. Indeed in year 2002 the growth rate was negative, and it is likely to be negative again in 2003. If this comes true, this two (2) year consecutive negative growth rate in the income tax would be unprecedented in the City's history.

It is significant that although the income tax revenues are the largest source of income to the General Fund, not all income tax collections go to this fund. By City Ordinance, 75% of the income tax goes to the General Fund. The other 25% go to the Special Income Tax Fund. This is a set aside Fund meant to be used for capital improvements. The impact of this will be discussed later in the decision under the Special Income Tax Fund section.

Of the expenses that the General Fund pays for, the department of public safety comprises approximately 65%. Moreover, wages for the entire City comprises 80% of the General Fund Expenditures. For the years 1999, 2000, and 2001, the growth rate of expenditures outpaced revenues. As an example, in 2000, the growth rate for spending grew at 7.4%, while during the same period revenues only increased by 6.3%. Thus, even though there was a growth rate in the income taxes, expenditures grew so much faster that the result was a negative impact on the General Fund. Taylor testified that this increase in expenses is not necessarily unmanageable if the increase in the income tax continues, but it becomes disastrous if the income tax does not increase. Because all new spending must come from increased revenue, then when revenue does not increase at a higher rate than expenditures, a negative spending balance occurs. Thus, in 1999, expenditures outpace revenues by $7 million; in 2000 it was $3 million; and in 2001 it was $13 million.

Because of the increase in losses, the General Fund carry forward balance began a steep decline. In 1990 it was relatively low at $4.8 million; it then reached its highest in 1998 at $37.9 million, and by the end of 2002 it was down to $11.060 million. Dorrian testified that it was predicted to drop to 5.335 million by the end of 2003.

Other numbers are relevant for discussion of the Income Tax. A 1% growth rate in the income tax revenues translates to about $3.25 million. In 2002 there was a negative growth rate in the income tax of -.05%, a percentage representing about $1 million less in income tax in 2002 than the previous year. The last time there was a negative growth rate was in 1961. Because of this decrease, the City had to begin tapping into other funds to support the losses incurred in the General Fund.

As noted the Local Government Fund income is the second largest source for revenues for the General Fund. It is often referenced as Revenue Sharing since it is revenue split among different

governmental agencies. Its source is the State of Ohio that has discretion in how much money each city should receive. On July 1, 2003, the amount of that income stream was frozen, and no growth is permitted, or is expected to be permitted, in the near future. The State of Ohio is also suffering economically and due its decrease in revenues, it determined that the amount for the City was going to be $3-4 million less in 2004 than in 2001. The General Fund thus lost this source of revenue growth.

Also pertinent is the Investment Earnings revenue source. The City provided evidence that the Investment Earnings has steadily decreased in recent years. The income from this source reached a peak of $29.14 million in 2001, but is only projected to bring in $9.4 million in 2003, and $7.2 million in 2004.

In addition to the General Fund, the City's other Funds have relevance because of arguments presented regarding the propriety of transferring money from other funds into the General Fund to cover the increased expenses. The other funds will be discussed below.

Special Income Tax (SIT) Fund

The SIT Fund is the City's "Special Income Tax" Fund. The City has enacted two (2) separate public resolutions that provide money to the fund. In 1952 and 1982 the City promised voters that 25% of the income tax revenue would be placed into the SIT Fund to pay for capital improvement expenditures. This has mostly been used to pay debt owed on bonds. Exempted from this category of payments are operating expenses that are paid from the General Fund. It is through the SIT Fund that the City pays for all of its capitalized expenses. However, from time to time, the City has the ability to transfer money held in the SIT Fund to the General Fund. As an example, in

2003, because of the financial pressures, the City determined that it was necessary to divert $5 million from the SIT Fund to the General Fund.

The City, through Dorrian and Taylor, argued that invasion of the Fund for operating expenses is unusual; should only be done in extreme circumstances; is inconsistent with the promises made to voters; and it claimed would risk its ability to pass levies in the future. If voters were informed that the SIT Fund, which is intended to pay for debt servicing, was used instead to pay wages, the City argues that it risks being able to pass tax levies in the future; would affect its bond rating; and would force the City to raise property taxes. Since it has not raised property taxes in 40 years, and since it has promised voters that it would not raise property taxes, then it argues that acting in that manner would be detrimental to its ability to govern.

The Union argued that the $120 million fund should be used for other things than just bond debt payments. It asserted that Council has the ability to re-direct the fund; that there is no legal obligation to restrict its use to bond repayments; and that the City Ordinance that prohibits that use is simple to change by the passage of a new Ordinance. Moreover, it argues that if the use of the fund affects the bond rating, the Council should simply pass a new property tax that it already has the authority to enact.

The City transferred $6 million from the SIT Fund to the General Fund to cover the expected wage increase it has budgeted for this process. Notwithstanding this fact, the Union's expert, Power, testified that that same $6 million was still in the SIT Fund and could be used to finance a portion of the wage increase that the Union is requesting. The City showed through Dorrian that the transfer was extraordinary and reduced the capital improvement budget by 30-40%. Dorrian also testified that he expects that another transfer from the SIT Fund will be necessary in 2004 even if the City's proposals are adopted.

SWACO

Also pertinent is the SWACO income stream. In 1981, after many years of cost overruns and delays, the City opened a trash-burning power plant. The plant never worked correctly and was a complete failure. Its operation has been closed since 1994. In 1993 the City leased the plant to the Solid Waste Authority of Central Ohio, hereinafter "SWACO." SWACO collects money from several sources and then pays the City's SIT Fund based on lease terms. All lease payments that have been made have been placed in the SIT Fund. Thus, although the City receives money, it is intended for capital improvement use through the SIT Fund.

Notwithstanding this intent of directing SWACO funds to the SIT Fund, in 2003 Dorrian determined that it was necessary to divert $5 million of these dollars to the General Fund to cover the increased expenditures. As a result, instead of having the money available for capital improvements, it has been spent on General Fund Operating Expenses.

Although SWACO is supposed to be making lease payments, it is behind. The lease payments were originally to pay for all of the City's debt associated with the building of the plant. That agreement has been modified numerous times and the schedule is currently expected to cover approximately 65% of the City's debt on the bond issue that raised the initial money for the building of the plant. A potential resolution of the problem with the City is to allow SWACO to issue bond debt. Upon receipt of the bond debt, SWACO would then make a one-time lease payment to the City of between $50 and $55 million dollars. Although the Union argued that the money could easily be placed into the General Fund, the City countered that such would be inappropriate since it is already designated for the SIT Fund. Moreover, the City pointed out that this deal has not been completed; is only in the preliminary stages; and cannot be counted on to determine what the benefits hereunder should be.

Moreover, Dorrian testified that even if SWACO issues the bond and pays the City between $50 and $55 million, he believed the best use of the money would be to split it into five (5) equal parts for use over five (5) years. The Union objected to this use of the money, and argued that it was just as logical to use it for the Factfinder's recommendations.

Economic Stabilization Fund (Rainy Day Fund)

The City maintains a fund that is meant to help it cover years when its revenues do not cover expenses, like it is currently experiencing. It showed that this fund, between the years 1998 and 2002, had a balance between $22 and $28 million dollars. In 2003, that amount will drop to $18.6 million. The difference is due to the $10 million that had to be transferred to the General Fund in October/November, 2003 to cover expenditures. This transfer represents the first time that the City has had to tap into this Fund in its history. Dorrian testified that he believed another transfer from this fund would be necessary in 2004 even if the City's proposals were adopted. The scheduled transfer was for $14 million in 2004 leaving a balance of $4.4 million in the Rainy Day Fund.

Employee Benefits Fund

The City contributes money to a Fund whose sole purpose is to pay for benefits given to all employees that is not covered by other insurance. All employees are potentially eligible to receive money from the fund. In order to determine how much money must be in the fund, the City uses actuarial guidelines. Based on those guidelines, the City was able to conclude that the Fund had more money in it than necessary. Moreover, because of the poor financial condition of the General Fund, it believed that it needed a source for more revenue. Because of the excess money in the Employee Benefits Fund, and because of the financial problems the City experienced, Taylor

testified that $19 million was transferred from the Employee Benefits Fund back to the contributors to the General Fund in 2003.

General Economic Positions

City

The City claimed that it faced the worst financial crises since its income tax was first enacted in 1948. It showed that it has experienced unprecedented declines in income tax revenues, and large increases in expenditures. Dorrian testified that not only were negative growth years a problem, but that flat growth years were very difficult. This is due to the fact that spending is based on projections; that the projections often assume growth in the General Fund; that compounding interest from past years growth is lost during flat years; and the loss of that compounding interest has serious detrimental affects on the General Fund.

The City showed that, for purposes of illustration, if the growth rate between 1991 and 2000 (6.5%) had been maintained thereafter, it would have an additional $65 million in income tax receipts. The City claimed that its financial crisis is based on several facts. Revenues declined because income tax revenues went down; local government funding was drastically reduced; and investment income declined along with the stock market in the aftermath of September 11th. The City also conceded that a portion of the problem was a prior administration where expenditures increased to the point where they exceeded revenues collected. This was accomplished by use of the large General Fund balance that had accumulated. The difference caused the City to have to reduce its budget by $90 million in a three-year period between 2001 and 2003.

Dorrian also testified that the City's poor condition led him to reduce the Estimate of Available Funds twice in 2003. On April 10, 2003, Dorrian certified to City Council that his

estimate of 2003 revenues had to be reduced by $5.93 million; from $545.43 to $539.5 million. Because of additional unexpected decreases, on July 28, 2003, Dorrian decreased that estimate again by an additional $7.6 million, or over $13.5 million in total. The result is a lower amount available for the City to spend. Consequently, the City had to make cuts from its 2003 budget that match Dorrian's certification of available funds.

The City summarized all of the foregoing by pointing out it had -.5% income tax growth rate; a predicted second negative growth rate in income tax for 2003; a first time use of the Rainy Day Fund; a $5 million diversion of "SWACO" funds; a freezing of Shared Revenues; and a 75% decline in the Investment Earnings contribution to the General Fund. It contends that these financial difficulties have required it to freeze all non-union employees wages since the first quarter of 2002; and has required it to either layoff or leave positions vacant for 220 employees.

The City also added that the economic proposal must consider its dire financial condition. It added to the claims already set forth above by citing Dorrian and Taylor's testimony whereby it proved that 2004 estimates show expenditures outpacing revenues by $25 million; a 30% reduction in funding to neighborhood health centers; that the "rainy day budget" will have to again be used to meet the deficit in 2004; and that another transfer from the SIT Fund will be necessary. It contends that this pending disaster is taken into account by the City's Last Best Offers, but would only be exacerbated if the Union were to prevail on the economic issues. Indeed, it asserted that the Union's proposal would result in significant reductions in services to the public; would result in an additional 100 layoffs in civilian positions; would result in the cancellation of new hires for the safety forces; and would seriously impair the City's ability to provide services to its citizens.

The City presented specific predictions of what would need to be closed or cancelled if the Union proposals were adopted. These include pools, recreation centers, home health care services,

park and maintenance work, and reduced hours across the board. These would have to be done, it argued, just to meet the current 2004 budget.

The City criticized the Union's expert, Patrick Power. It made extensive objections to his abilities; his expertise; his qualifications to judge the City's finances; and many other critiques. It describes his opinions as misleading, lacking integrity; outdated; and unsupported by the facts. It summarizes his position as a professional expert for the FOP and asks that his testimony be completed disregarded.

The City similarly discounted the worth of the Union's economic expert. Since that testimony was a summary of the national economic picture; since Buser had not experience in municipal finance; and since he could not translate alleged nation-wide economic forecasts into increased economic activity for the City; then it asserts that his testimony should have no impact. In contrast, it argues that its economic expert provided experienced, valid opinions that the City will not be able to tie its economic recovery with that of the rest of the country. Since his testimony was specific and applicable to the City, then it argues that it was more credible, and more ably proved that the City is unlikely to see an improved economic picture anytime soon.

The City asks that the Union's reliance on sixty (60) new hires be found irrelevant. It contends that such does nothing more than prove that the City has kept the same relative number of police, and does nothing to prove that it has an ability to pay the wages asked for by the Union. As a result, the City claimed that the only conclusion possible to make is that it is in the deepest, longest recession of its history. Moreover, it claims that following Factfinding, but prior to Conciliation, its financial condition only worsened. It asks that all of the foregoing be considered in determining the issues.

Union

To counter the evidence from Dorrian, the Union employed Patrick Power as its financial expert. Power worked for twenty one (21) years in the Ohio State Auditor's Office; is a former Columbus City Finance Director; and is a former Columbus City Chief of Staff. The Union offered him as an expert in both state and municipal funding.

Powers testimony was that the City's claimed inability to pay was really just an unwillingness to prioritize its funding resources. As an example, he testified about police helicopters that are being paid out of the General Fund rather than the SIT Fund. If the General Fund were no longer used, he claimed that those funds would then be free to use on police wage increases.

Power also testified that more money is available because of certain actions taken by the City. He testified that the capitalization of earmarked money intended for use on Police and Fire Pension Funds has created $10.5 million in present-value terms. The result, it claims, is that an additional $2 million that would have been paid by the General Fund is now being paid by the SIT Fund, and thus frees more money. In addition, Power claimed that property tax revenues were adjusted upwards by Dorrian, thus increasing the budget by $4.4. million. He claimed that these increases were not accounted for by Dorrian in his analysis.

The Union contends that the Factfinder correctly evaluated the general economic condition and forecasts for the City and the nation. It claimed that the outlook was for increased economic growth, both locally and nationally; that the economy is in the midst of a recovery; and that the recovery will lead to increased money for the duration of the Agreement. It cites the reliance of the Factfinder on testimony by Alan Greenspan, the Federal Reserve Chairman, who estimated growth rates of 2.75% and 4.75% in 2003 and 2004, respectively. Since these are legitimate factors; and

since they promise excellent growth rates, then it argues that the conclusions of the Factfinder are valid.

The Union cited the testimony of its expert witness, Dr. Stephen Buser, which proved that current economic indicators are up. It asserts that his testimony proved that leading economic indicators have had consecutive months of increases; that the improvement of the economy is better than expected; and that it has improved more than predicted by the Factfinding report. It maintains that with the national economy improving, the City should improve as well. It cited Buser's testimony as proof that the City's GDP and the nation's are highly correlative. It contends that it established that not only is the economic outlook expected to be improved for the City, but that the improvement will occur with some lag following the nation's recovery. Thus, it argues that the City can expect an increase in revenues in 2004.

Comparables

The City of Columbus used comparables of other similarly sized cities in Ohio. These were Cleveland, Cincinnati, Toledo and Dayton. Based on these comparables, it argued that the police force was at levels above any major metropolitan area in Ohio, and at the top of the market for all comparable jurisdictions. Moreover, the City showed that this police unit has received historically higher wage increases, on a percentage basis, then any other group in the City.

The Union believed the strongest comparables were both the internal bargaining units; and the municipalities in and around Franklin County. It cites authority for the proposition that the best comparables are the immediate area where the local labor market defines the competitive market for work. The Union presented internal comparables; external from the county; external from the state; and external comparables of other similar Midwestern and Northeastern Cities.

Standard of Review
Impact of the Factfinder's Report

City Position

The City cited Ohio Case law in support of its argument that a Conciliator must take a "fresh look" at the case following Factfinding. The cited law supports the notion that a Conciliator is not bound by the findings of the Factfinder. It claims that no other interpretation can be made, otherwise a hearing *de novo*, as is required by the Conciliation process, would be superfluous, and unnecessary. It claims that the Factfinder's Report need not be considered at all.

The City argues that even if given consideration, the Factfinder's Report should be given little weight because it has been shown to contain the wrong conclusions. It argues that the Factfinder's Report, through the passage of time, has errors that have been proven completely wrong. These errors include the conclusion of the Factfinder that "some indicators of a favorable change in the economic climate" would result in a better financial situation for the City. Since he based his recommendation on this conclusion, and since the economy and the City's financial picture have not improved, then it asserts that the recommendations are invalid. Indeed, the City's finances have proven to have only worsened over time, thus rendering the Factfinder's opinion's unsound.

The City contends that testimony given at the Factfinding hearing was wrong. It cites its evidence as countervailing the testimony of Patrick Power who claimed that tax receipts for the last two (2) quarters always outpaces the first two (2) quarters and that the City would experience a 3.6% growth rate for 2003. Both of these were proven incorrect, it claims. It argues that the evidence indicates that for fifteen years, 2003 included, tax receipts in the first half of a year have always had the largest tax receipts. Moreover, it asserted that unlike the 3.6% growth rate predicted by Power, the actual growth rate for the City was a -.5% between October 2002, and October 2003.

The City contends that the Factfinder's Report erred by:

- relying heavily on other bargaining units in the City;
- failed to consider the pension pick-up given to this bargaining unit;
- concluding that the City "did not disagree" with the Union's choice of comparables (suburban Columbus police departments);
- using the suburban police departments as valid comparables;
- relying on the City of Pittsburgh's 4% wage increase to its police force because, after the issuance of the Factfinder's decision, the City of Pittsburgh laid off nearly 100 officers because of its financial crises.

The City thus contests the reliability of the Factfinder's Report, and asks that it be given little weight.

Union Position

The Union believes that the Factfinder's Report must be given great deference and should be adopted absent a clear show of error. It complains that the City is asking that the Conciliator completely ignore the Factfinder's Report when the myriad authorities that have considered the issue have concluded otherwise. It cites authority, both case law and neutral arbitrators, who have held that "clear error" is required before the findings of a Factfinder should be overturned. It cites the Factfinder, in a prior decision, who stated that a Factfinding report is due great deference as long as

1. it is based on the same facts;
2. it follows the same statutory guidelines;
3. it is free of error; and,
4. it is based on sound reasoning.

The Union also cites prior decisions of the undersigned in support of its position.

Moreover, it argues that the City failed to recognize that the Factfinder justified the increased wages as a *quid pro quo* for the increased health care costs that he recommended the bargaining unit accept. It also underscores the fact that the Factfinder recommended that the City follow the same pattern bargaining that it engaged in with two (2) of its other bargaining units – AFSCME (non-safety, non-supervisory employees) and CMAGE (non-safety, mid-level supervisors). It contends

that the Factfinder's overall recommendations were fair; accepted and rejected portions of both Parties' positions; and was a fair compromise decision.

The Union points out that the Factfinder rejected the higher wage increase sought by the Union; rejected the increase pension pickup sought by the City; rejected higher shift differential and longevity pay sought by the Union; rejected the higher uniform allowance sought by the Union; and rejected a Union proposal that would have increased vacation benefits. In like fashion, the Union listed the numerous City sought cost-saving measures that the Factfinder agreed with, such as: health insurance; pre-existing condition coverage; removal of certain drug coverages; and other medical benefits.

The Union contends that the Factfinder's Recommendations amount to an "honest compromise" between the City's need to be financially responsible and its members need to be paid a fair market wage for their services. Moreover, it contends that the Factfinder's motive in holding the City to the same type of deal it entered with the other bargaining units is fair. It points out that the City's position, that the raise will interfere with its ability to provide other public services, is not a valid factor that would derail a pay raise. Rather, it contends that the statutory guidelines suggest a balancing of interests that, while relevant, does not necessarily require a reversal of a pay raise when that money, like all public funds, will be best served by being used to provide market compensation to the skilled police force.

The Union argued that the cost of the Factfinder's Recommendations were not as costly as calculated by the City. It went through a detailed, line-by-line argument regarding how the City miscalculated the impact of its proposal versus that of the Factfinder. It claimed that the City's is a misrepresentation of costs; fails to account for attrition and new hires; and makes other fundamental

errors in accounting for the costs of each proposal. It claims that the costs differences are simply not very great.

The Union complains that the City has challenged every compromise issue that the Factfinder has made. Its position is that the City is unwilling to reach a reasonable bargaining compromise as evidenced by its challenge to every compromise finding of the Factfinder. It contends that the City's position amounts to a demand for the FOP to accept minimal wage increases even though the remaining bargaining units have received the exact same wage increase (4%) that the Union now requests. It contends that the Factfinder's Report and Recommendations should be adopted in total unless the City could prove that he was clearly in error. Since he was not in error, and since the statutory factors for the Factfinder are the same as those the undersigned Conciliator must consider, then it argues that the Factfinder's recommendations must be adopted.

ISSUES

Contentions of the Parties
And Findings of the Conciliator

The following issues were presented at the hearing:

1. General Wage Increase
Article 20, § 20.1

City Last Best Offer

The City offers a 2% wage increase in the first year of a three (3) year agreement. The raise is to be paid retroactive from December 9, 2002, through December 6, 2003.

The City offers a 3% wage increase in the second year paid in two (2) increments. The first portion is to be made effective December 7, 2003 at 1.5%; and the second is to be made effective June 6, 2004.

The City offers a 4% wage increase in the third year of a three (3) year Agreement paid in two (2) components. The first portion is to be made effective December 5, 2004 at 2%; and the second is to be made effective June 5, 2005 at 2%.

Union Last Best Offer

The Union's Last Best Offer was a 4% wage increase in each year of a three (3) year agreement, to be paid as follows:

2% retroactive to December 9, 2002;
2% effective on August 3, 2003;
2% effective on February 1, 2004;
2% effective on August 2, 2004;
2% effective on January 31, 2005; and,
2% effective on August 1, 2005.

Union Position

The Union asks that the Factfinder's Recommendation wages be adopted. Since the Union has traditionally obtained 4%; since the remaining bargaining units have recently obtained 4%; and since the City has the ability to pay 4%; then it argues that there is no reason to adopt the City's proposal.

The Union argued that the difference between the two (2) proposals was only $1.7 million dollars, and it had Beth DiSimone testify that to that affect. It points out that the Factfinder's grant of market wage increases to the Union was reduced by the manner of its implementation. Recognizing that the City has certain financial issues, it showed that the Factfinder considered those issues and split the wage increases into two (2) per year, back loaded and split. Moreover, it argues that the City failed to recognize that the Factfinder justified the increased wages as a *quid pro quo* for the increased health care costs that he recommended the bargaining unit accept. It also

underscores the fact that the Factfinder recommended the City follow the same pattern bargaining that it engaged in with two (2) of its other bargaining units – AFSCME (non-safety, non-supervisory employees), the IAFF, and CMAGE (non-safety, mid-level supervisors). Since AFSCME received 4%, and since the IAFF received 4%, then it argues as only fair that the FOP, the lead bargaining organization, receive the same.

The Union argues that the wage raise is important; is justified due to the important work that the bargaining unit does; and claims that the public is best served by giving market compensation to the skilled police force. It cites statements from the Mayor, from the Factfinder, and testimony from Taylor to prove that safety is one of the most important functions of a City. It contends that this evidence proved that the important function requires fair compensation to the police for the services they provide, and that the service has become more important since September 11th. It claims that the City has not proven an inability to pay; that nothing was introduced to prove that the City could not finance the Factfinder's wage increase; and argues that the difference between the City's proposals at Factfinding and Conciliation prove that it has more ability to pay than it is claiming.

The Union claims that the City's calculations were off, and contends that the difference in costs between the two (2) proposals is much less than it asserted. Moreover, it argues that if the City were accurately accounting for the costs, then it would not have agreed to the 4% wage increases for the IAFF, AFSCME, and CMAGE. It cites the Factfinding decision in the City's case with IAFF where Factfinder Ted Clemens did not find the City's claim of declines in year-end balances to be persuasive proof that it could not afford the wage increases. Moreover, it contends that the Agreement reached with AFSCME in early 2002 was done even though the City knew that its rate of income tax had declined in 2001 – a reversal of the long trend of increased income tax revenues. Finally, the City accepted the Factfinding report of Margaret Nancy Johnson, which gave CMAGE

employees a 4% wage increase even though it knew that the income tax receipts had declined in 2002. It asks that it be treated the same as these other bargaining units. It contends that to give the FOP less of a wage raise than these other bargaining units is tantamount to ascribing lesser value to public safety than other personnel. It claims that the payment of the wage increase is simply a matter of redirecting priorities to insure that the police officers are paid fairly.

The Union claimed that the City's position on its poor finances was discredited by Power and was disproved by its own actions. Since the City is planning on hiring new police officers; and since it has no plans to layoff current police officers; then it contends that the City recognizes that it has the ability to maintain the police force as currently configured. Moreover, although the City relied on decreased services in the Parks and Recreation, and Health Departments, it argues that record proved that very few services will be discontinued and many will be continued with a fee. Based on these actions of the City, the Union argues that it was unable to prove that it could not afford the raise recommended by the Factfinder.

The Union contends that the City has the ability to currently fund the Factfinder's recommendations with available funding. It points out that except for the two (2) downward adjustments by the Auditor, the Factfinder had the same evidence as the undersigned. It argues that this City has a $527.7 million budget that Council has the ability to change its priority in allocation based on changing conditions. It claims that the City should change its priorities to meet the costs of the wage raise as recommended by the Factfinder. It cites the failure of the Council to act following the second adjustment of Dorrian as proof that it has flexibility in how and what to spend funds on.

The Union argues that the City has flexibility as proven by the fact that it had money set aside for a 4% wage increase. Since it used much of that money to pay an unexpected worker's compensation bill, then it argues that it is able to exercise that discretion to pay the reasonable wage

increases requested by the FOP. It cites other efforts where the City took action to avoid layoffs, and redirect funds, when it was in their interest to do so. Since the City has shown flexibility when it needed to, it argues that it should be forced to employ such flexibility here.

The Union cites extensively from the Factfinder's Report and claims that the City must maintain the same level of wage raises as the remaining bargaining units as well as that paid by Franklin County municipalities. It argues that the City must maintain the same leadership position as far as wages, and claims that such must be done since the City has to compete in the same labor pool as the other municipalities. It contends that the leadership position is justified since the City police have harder work to perform; since it has traditionally ranked first or second in the county; and since the Factfinder's Recommendations would maintain this level whereas the City would not. It argues that if the county rank of the police is not maintained, it will not be recovered by the end of the Agreement period, and asks that this result be avoided.

It argues that the other large metropolitan areas also support a 4% wage increase. It claims that the Pittsburgh situation, where a 4% wage increase was granted despite the near bankruptcy status of the City, only supports its proposal. It argues that the wage increases are justified even in the face of terrible financial difficulties. Since the City has continued its high bond rating even in the face of tough times, it argues that it can afford the raise.

City Position

The City based its analysis on 1,826 officers being fully employed. This was the number in place at the end of 2002. Based on this number the City contended that the difference in the Parties' proposals was $8.7 million dollars over the life of the Agreement. It argued that the testimony of DiSimone should be rejected since she only applied the analysis to the Union's final offer, and not to

the bargaining unit as it progressed through the steps of the wage scale. It contends that she did not apply the same set of assumptions to the City's proposal as she did to the Union (that the number of officers in each step would be constant; that the overtime would not change with the increased wages; and that the City would not hire new recruits). When the analysis keeps the same set of assumptions, it argues that the difference in the proposals remains the same, about $8.7 million dollars.

The City argues that the affect of adopting the Union's offer would be to cause it to fund a $4.5 million total difference for the first few years of the Agreement due to the extreme length of time of the negotiations. It contends that it does not have the ability to fund and administer the Union's final offer. It cites the statute for support that the undersigned must consider the ability of the City to administer and finance the proposal. It describes as absurd the Union's interpretation of the statue where it argues that the City has the "ability" to pay for the proposal. It contends that the undersigned must consider what is appropriate, reasonable and fiscally responsible in light of the City's finances as a whole and the potential impact on other services. It cites Joel Taylor, the City's Finance Director, who stated that the issue was "a question of responsible stewardship of the public funds." (t.p. 229). It cites other case law in support of its contention.

The City claims that its offer is more than reasonable. Even considering its poor financial condition, the City argues that its offer is neither a concession nor a wage freeze, but instead is an average of 3% per year, and a cumulative 9% over the life of the Agreement. It concedes that these officers perform remarkable and often perilous work, and it asserts that its offer recognizes this product of the Union without risking the financial health of the City. It contends that its offer is actually more lucrative than the Union's in the third year of the Agreement. It maintains that the offer is higher than it made during Factfinding, and maintains that such is nothing more than a

recognition that this process requires a "last best offer" be chosen. In order to be competitive between last best offers, it argues that it recognized the situation it was in and raised its offer. It contends that the Union's claim that such proves that it is in better financial condition must be rejected.

Contrary to its offer, it describes the Union's position as incredible in demanding not only a 4% wage increase, but increases in shift differential and longevity pay. It contends that the Union's offer must not be accepted based on the prior Agreements; the revenue and budget problems of the City; comparison of the FOP with other City employees; outside comparables; and all other statutory considerations. It contends that the Union's final offer, if granted, would result in a detrimental impact on the normal standards of public service.

The City contends that the Union's position lacks any reasonable basis and has no support from the record. It argues that its offer keeps the Union competitive with the highest paid city employees and outside comparables. It maintains that the City has been proud to keep the unit as the highest paid in the field; and that it has paid in recognition of their work when times, and financial conditions allowed it. It contends that its offer is paid for through a series of drastic cuts in other personnel. Since it has used this method, and every other conceivable one-time sources of revenue, then it asserts that it is at the end of having any ability to find new sources of revenue. Since its 9% offer will keep the competitive rank of the unit, then it argues that the Union's 12% is not justified under the statutory considerations.

It maintains that the Union's reliance on market rank is wrong, and misinterprets the statute. It asserts that the statute requires a consideration of all relevant factors; does not demand that market rank be maintained; and if it did the raises given would be automatic based on what other

municipalities have already done. Since the statute has more factors to be considered, then it contends that the Union's reliance on market rank is misplaced.

The City contends that the most comparable markets are Cincinnati and Cleveland, with other Ohio major metropolitan areas, and other Northeastern and Midwestern cities having some reference value. It asserts that the best factors to use are comparable population; number of sworn officers; and relative geographic location. When these are given due consideration, the City contends that the officers in Columbus, even if only 2% is granted in the first year, would out-earn Cincinnati officers by $6,000, and Cleveland officers by $11,500. Similar differences exist for sergeants and lieutenants; and exists when the full benefits package is compared. It contends that the wage rates have outpaced inflation by 16.7% over the past ten (10) years; that even with a 2% wage increase in 2003, inflation will be outpaced by 16% over the same period; and that the minor loss during 2003 is more than made up for before and after 2003.

The City concedes that it gave other bargaining units 4% wage increases, but argues that the timing of those wage increases in a crucial consideration that both the Union and the Factfinder failed to fairly evaluate. It underscores the fact that each of those other bargaining units negotiated their wage increase in years when the City was in a different financial condition. Since the current financial situation is what is relevant, then it argues that those past increases lose their value as comparables. Indeed, the City agrees that a 4% wage increase is justified if a different financial situation were present. Since it is suffering through its worst financial crises in recent history, then it contends that lower wage increases now, for this bargaining unit, are justified.

The City asserts that the other bargaining units actually made serious concessions to get those other wage raises. Indeed, it proved that CMAGE got a 4% wage increase in 2002, but got nothing in 2003 by order of a Factfinder, and is now subject to a wage re-opener. The City contends that this

bargaining unit has traditionally acted as the leader in collective bargaining and thus questions whether it is legitimate to use the internal unions as valid comparisons. Since it was the leader in receiving 4% wage increases, then it argues that it should be the leader in accepting less than that rate.

The City argued that the external comparables used by the Union were also not valid. It argues that the suburban municipalities in Franklin County are not comparable; that they do not have the characteristics of a major metropolitan city; that they have a more affluent, higher tax base; that they have fewer officers; less crime; and are not the same type of force as that the City employs. Even if used, the City points out that the City ranks higher than ten (10) out of (12) Franklin County jurisdictions. Since it ranks so high, it argues that the 4% wage increases given to lower paid suburbs do not have the impact that the 4% demand of the Union would have on the City's finances. In flat dollar numbers, the City relies on the fact that the 4% demand of the Union would cost a great deal more than other lower paid suburbs 4% wage raise would have on them.

The City argues that it is competitive when compared with other major metropolitan areas. Even if the Union's comparison is considered, it argues that such leaves out the pension pickup that it pays, but that other major cities do not. Once that amount is factored in, and contrary to the Union's position, it contends that the officers compare favorably. It contends that each of the Union's comparables are flawed; that Columbus remains competitive and one of the best paid forces in the state; that the cities of Toledo and Pittsburgh are not valid comparisons; and that each of these cities are either under dire financial conditions or received wage raises significantly less than the City has proposed.

It argued that the growth in income tax receipts is a valid measure of its growth, and that it must remain positive for the City to remain viable. Moreover, it argues that any increases in wages,

for police and other safety forces, must be based on the increased income tax receipts or the City will fall into deficit spending – an act prohibited by state law.

Findings

The City's last best offer must be adopted for the new Agreement. The City showed that not only is it suffering through serious financial hardship, it proved that the extent of its financial distress is unprecedented.

The issue that the Union could not get past, without even getting to the remaining factors, is the issue of its historical wage increase compared with the City's financial health. The Union's proposal is based in large part on the fact that this bargaining unit has usually received a four percent (4%) wage increase. Each year from 1997-2001 it received 4%, and it averaged 4.1% over 8 years. The Union's last best offer maintains that consistency. The undeniable problem is that this wage rate was considered mutually acceptable, and thereby reasonable, during some of the best economic times the City has ever experienced. The question thus becomes, if 4% is fair and reasonable during good financial times, how does it remain fair and reasonable in periods where a financial crisis is at hand?

The Union couched its claims in terms of "priority" and "ability to pay." Notwithstanding these normally reasonable terms, it presented nothing to counter the City's evidence that it was in very poor financial condition. Indeed, a detailed review of the City's financial condition shows nothing positive as far as improved economic conditions. The only thing keeping it from declaring a financial emergency was good financial management during a period in which times were extraordinarily good. Instead of spending that money, the City made good conservative decisions

and allowed its Funds to have large balances. But-for those balances, these Parties would not have any money to fight over. This is fair to consider in determining what the appropriate raise should be today.

It is significant that the City provided convincing evidence that it was approaching a financial disaster. The number of facts it established were impressive. Expenditures outpaced revenues; expenditure growth was significant; revenue growth was either decreasing or stagnate from every important source; revenue that previously had been left in funds for other purposes was continually being poured into the General Fund just to meet current obligations; it had frozen wage increases for all employees except those in a bargaining unit; the Rainy Day Fund had been tapped for the first time ever, was going to be tapped again, and was rapidly decreasing; and the economy, *at best*, has the potential to recover in future years. In contrast, the Union's response is that they should get their demand because they have always received that amount; because other bargaining units received that amount; because the economy might be improving; and because the Factfinder supported their request. None of these reasons proffered by the Union are sufficient to overcome the case presented by the City.

As just noted, the fact that the Union has always received a 4% level raise not only did not support the Union's case, it tended to support the City's claim that it was not merited because of its financial problems. When a 4% raise is reasonable during periods of financial strength, it follows that it is not merited during periods of weakness. The statute recognizes that the City's ability to finance and pay for the proposals is an important issue. Since 4% was reasonable to pay when the City was doing well financially, then it follows that a lower wage rate is reasonable when revenues fall. If it is true that 4% is a sensible wage raise when times are good, then there is no logical way to extend that otherwise reasonable wage raise to periods when the finances do not justify it. No matter

what other factors are considered, it is simply too difficult to get past this fact for the Union to justify its proposal. Notwithstanding this difficulty, other factors also support the conclusion.

This finding is justified even though the Union argued that other bargaining units received a 4% wage increase during this same period. A careful review of those Factfinding decisions show that those results are distinguishable; that they were based on unknown facts that are now known with virtual certainty; and that they were based on the level of the wage raises given to this bargaining unit during their last negotiations. Because of these factors, those other bargaining unit raises lose their otherwise important influence.

The other bargaining units received wage raises of 4% in recent years and each was following a Factfinding report. A review of those reports show that the City consistently took the position that financial troubles were probably coming. The opinions of the Factfinder's show that each considered this claim; that each found the claim to have merit; but that since it was only a prediction, and not a known fact, then it was not sufficient to justify reduced wage increases. That guesswork in the previous Factfindings has become a proven fact. The City did not have to rest its position on forecasts. Instead it proved that the tough financial situation it had predicted had come to pass. It was able to rely on *actual* poor financial data to prove that it could not afford a normal wage increase. Therefore, the treatment of the internal bargaining units is distinguishable, and carried less weight than it might normally have.

Moreover, at least the firefighter Factfinding relied on the fact that the police, *these bargaining units*, received a 4% wage increase in their Agreement. While this is influential because safety forces are often treated similarly, it can become an impossible situation if it has no end. If the conclusions of Factfinder Clemans were sufficient to support the Union's case here, the City would never be able to avoid a 4% wage increase. If the Union's argument were found to have merit, then

Clemans decision would bind the undersigned here; the undersigned would adopt a 4% wage increase here; then the next firefighter contract would cite this decision for a 4% there; then back here; *ad infinatum*. To grant this claim, without end, would result in safety force negotiations becoming an endless circle of increasing wage raises without the ability to interpose outside variables. It is not logical, and cannot be supported. Therefore, the treatment of the firefighters must be found as being overridden by the City's current financial situation.

The Union also relied on the claim that the economy might be improving. Indeed, the past Factfinding here and in the other bargaining unit's processes relied on this same assumption. Unfortunately, that prediction has turned out to be wrong. It is important to recognize that the Factfinder here relied on predictions of future economic improvement to justify a 4% wage increase right now. The error in this logic is that right now it is known that poor economic conditions exist. Once poor economic conditions are proven, then it follows that the wage raise that is most reasonable is one that matches the poor economic situation. Therefore, the reliance on the prediction of some future outcome to justify current benefits doesn't hold up. It was proven that the City had a bad year in 2003; it was proven that another bad year in 2004 will follow; and it was shown that even if the economic forecasts come to pass, it will not result in positive affects for the City until some time subsequent. It is reasonable to account for these proven facts, and find in favor of the Party whose position recognizes that the current financial situation requires reduced wage increases.

The result is that the reliance on predictions of an improved economy were mistaken. Other than the facts just cited, it is significant that the Factfinder here found in a State of Ohio statutorily mandated process, that the economy was "dreadful." In a cited decision, faced with the question of economic forecasts, the Factfinder for this case found that the economy was in bad condition and that such was a valid consideration. Moreover, that decision pre-dated the one rendered here by just

three (3) months. Consequently, since the Factfinder here relied in part on the determination that the economy was improving; and since by his very opinion that decision is incorrect, it must be found that his recommendations were plainly wrong. The record in the Factfinding did not fully address the financial condition, and even if it had, the record established in Conciliation presented an insurmountable problem – the economy and the City's finances are suffering and need relief. Based on these analysis, it must be found that the Factfinder was plainly wrong; that the reliance on other bargaining units was misplaced; that the economy is not improving as predicted; and that the City can not afford the 4% wage increase proposed by the Union.

2. Shift Differential
Article 23, § 23.1

City Last Best Offer

The City proposes the *status quo* rate of $.85/hour.

Union Last Best Offer

The Union proposes an increase of $.10/hour, to $.95/hour as of August 1, 2005.

Union Position

The Union argues that shift differential have been regularly increased since 1976; that the Factfinder's Recommendation keeps pace with other Franklin County police forces; and that the rate of inflation justifies an increase during the life of the Agreement.

City Position

The City reiterates its claims on its poor financial health, and asserts that such justifies no change. In addition, it argues that an increase was just made to the Shift Differential in the last Agreement, and that amount was $.10/hour, or 13%, for years 1999 through 2002. It asks that the comparables it provided be considered and contends that when such is done it is clear that the current rate is very generous.

Findings

Based on the analysis contained in the wage section, the City's proposal is adopted.

3. Longevity Pay
Article 23, § 24.1

City Last Best Offer

The City proposes the *status quo* rate.

Union Last Best Offer

The Union proposes an increase in each category of $100.00, to be made effective August 2, 2004, with payments starting in June 2005.

Union Position

The Union makes similar arguments here as it did in Longevity Pay; and adds that the Factfinder noted that the modest increases should be pushed to the third year to help offset the cost.

City Position

The City reiterates its claims on its poor financial health, and asserts that such justifies no change. It contends that the granting of the Union's proposal will have a negative impact on public service. It argues, again, that this benefit, like Shift Differential, was changes significantly during the last negotiations, and that the current rate is very generous when compared to truly comparable jurisdictions. For these reasons, it asks that the Longevity Pay not be changed.

Findings

Contrary to the analysis in the wages section, the Union's proposal is adopted. Although the City proved a poor financial condition, this modest increase is justified. The Union has successfully negotiated an increase in the benefit over the years; the comparables show that an increase will

maintain their relative status for this benefit; and the increase will reward the employees for loyalty to the City. Since the costs to the City for this benefit are much less than the wage increases requested, the impact will be less severe. Moreover, it is expected that the police will react strongly to the denial of their wage increase. It is felt that this modest increase will mitigate those feelings in a manner that recognizes their importance and seniority. It is as much symbolic as merit based, and is given to underscore that their job is important, their service is appreciated, and that their wages would not be at the level granted except for the unfortunate state of financial condition that the City finds itself in. For these reasons, the Union's proposal is awarded.

4. Health Insurance
Article 35, §§ 35.1, 35.11

35.1(A). The Factfinder's award recommended effective dates that coincided with the timing of his decision. The Union accepted the Factfinder's decision.

35.1(B). The Factfinder's award recommended effective dates that coincided with the timing of his decision. The Union accepted the Factfinder's decision

35.11 Employee Monthly Premium Contributions. The FOP currently pays a $10.00 contribution to the health insurance premium regardless of whether they are on a single or family plan.

City Last Best Offer

35.1(A). The City proposes changing effective dates in the section to January 1, 2004. Its offer includes a change of its proposed date to one that is more convenient depending on the timing of the Conciliator's award.

35.1(B). Prescription Drug Co-Payments. The City proposes changing effective dates in the section to January 1, 2004. Its offer includes a change of its proposed date to one that is more convenient depending on the timing of the Conciliator's award.

35.11 Employee Monthly Premium Contributions. The City proposes a tiered system where the $10.00 would remain until December 31, 2003; would then increase on February 1, 2004, to either 8.5%, or a ceiling of $22.25 for single, and $57.75 for Family; would again increase on December 1, 2004, to either 10%, or a ceiling $27.45 and $71.40 for Single and Family plans, respectively.

Union Last Best Offer

35.1(A). The Union proposes making the effective dates in the section to August 2, 2004.

35.1(B). Prescription Drug Co-Payments. The Union proposes making the effective dates in the section to August 2, 2004.

35.11 Employee Monthly Premium Contributions. The Union proposes an increase from $10.00 for both single and family plans to $15.00 for single and $25.00 for family effective August 4, 2004; and then to increase the amount to 10% of negotiated insurance capped at $25 single and $35.00 family, effective August 1, 2005.

Union Position

The Union asserts that if the City proposal is granted, these bargaining units will have to pay more than any other bargaining unit for health care. It contends that the increase the City is seeking amounts to a 146% increase for single plans and a 501% increase for family plans. It complains that

while it has agreed to a reasonable change, the City is asking it to carry a major burden over a very short period of time. It cites authority for the proposition that only gradual change is reasonable; that the City can not place the burden on these employees; and that the exchange given to the remaining internal bargaining units (higher wage increases in exchange for reduced health care benefits) is something that does not exist here.

City Position

The City contends that its proposal on 35.1(A) and (B) are simply housekeeping. Since they would move the effective dates forward to match the Conciliator's award, and since that is effectively what the Factfinder recommended, and what the Union accepted, then it contends that the City's proposal is reasonable. It asserts that it will see some savings, and that the proposal keeps the spirit of the Factfinder's decision.

The City argues that since it did not get the same concessions from the FOP as it did from the other bargaining units, then the FOP members will still incur less costs for health care than the remaining employees. It contends that this will be true even if the City's proposal on health care is adopted. It describes its offer as providing higher benefits at fewer costs to the FOP than any other City employee. It argues that it is reasonable to have the Union employees pay the same costs, proportionally as all other City employees.

The City argues that its final offer is reasonable; takes into account the large amount of time that has passed for negotiations and since the Factfinder's Award; and contain a ceiling that insulates the members from large increases. The City presented evidence that showed that the Union members receive the highest health care benefit; costs the most to insure; yet pay the least amount for the cost of their health insurance. It argues that the City has suffered through what every other

employer has suffered – dramatic increases in health care coverage. It contends that its offer brings the bargaining unit in line with all other City employees; with all other comparable employees in police forces; and is a fair system for sharing costs across all of its employees.

Findings

The Union's proposal on the effective date is granted.

The City's proposal on the change in benefits is granted.

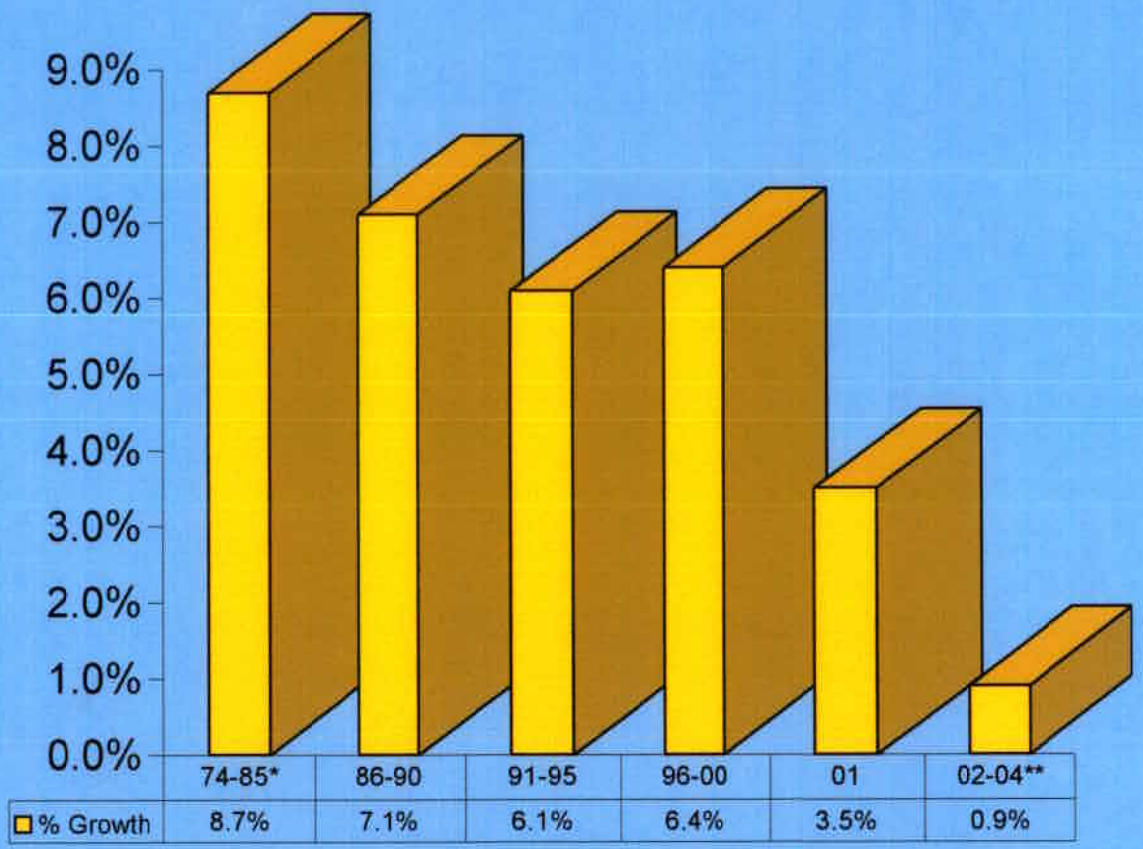
A review of the record shows that the Union members should not be harmed by the length of the negotiations. The City's changing of the date, while good administratively, will affect the paycheck of every bargaining unit member and must not be done.

However, the health care benefit offered by the City is reasonable based on the current state of affairs in the health care industry. It is important to recognize that these bargaining units have had an unusually generous health care benefit. It is fair to consider this fact in determining whether it is fair to change their health care now. A review of the City's proposal shows that it is still generous when compared to other health care premium sharing benefits that other similarly situated employees receive. It provides for a transition from the low, flat dollar amount that is currently in the Agreement, to a generally accepted percentage basis. In addition, it provides for a ceiling and as such, contains a protection that is set relatively low for a health care premium sharing benefit. Based on these factors, it must be found that the City's proposal is reasonable and must be adopted.

March 29, 2004
Cincinnati, Ohio

_____
Michael Paolucci

Income Tax Growth: 1975-2004

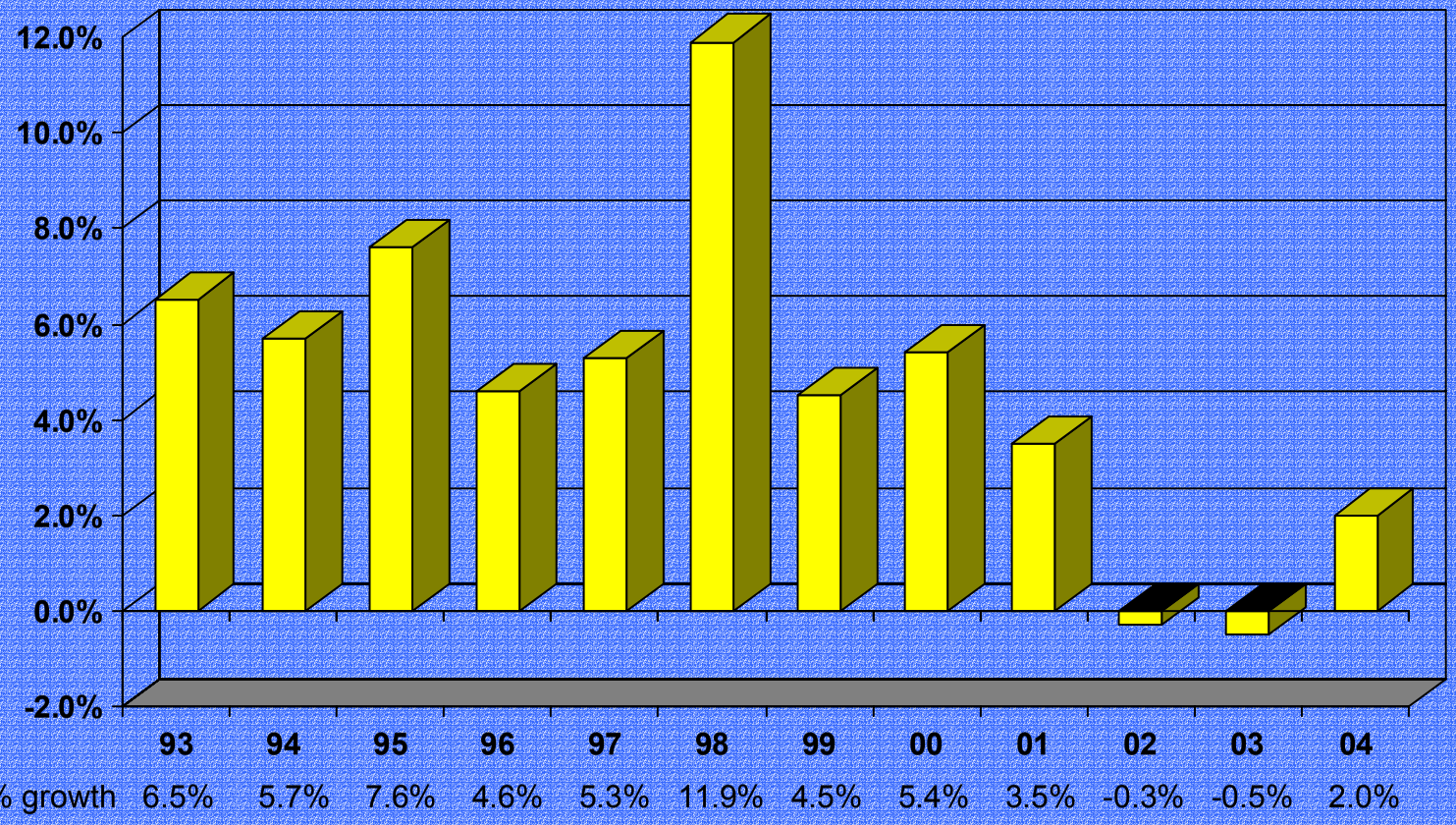


	74-85*	86-90	91-95	96-00	01	02-04**
% Growth	8.7%	7.1%	6.1%	6.4%	3.5%	0.9%

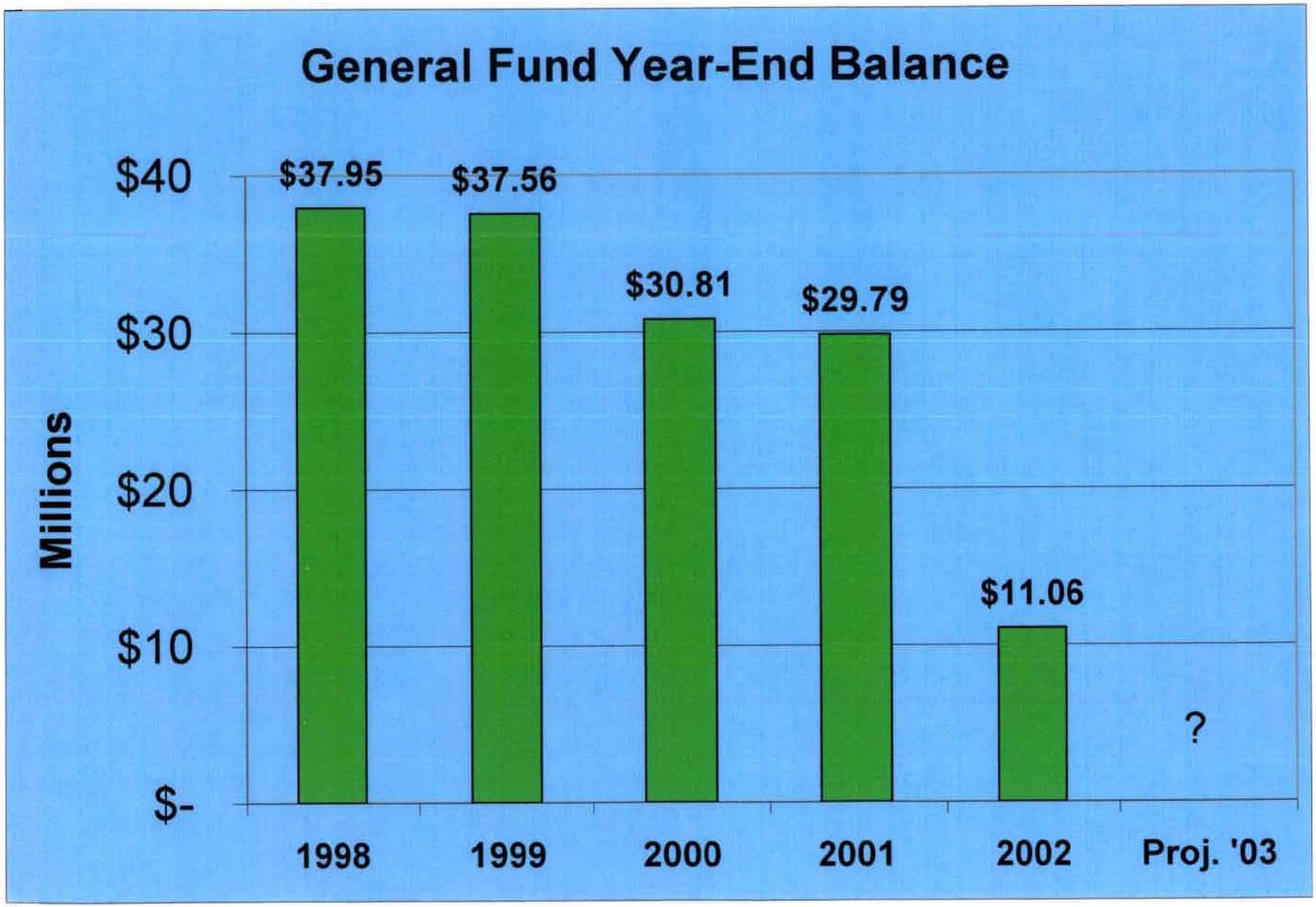
* Excludes 1983 and 1984 growth rates of 36.5% and 15.3% respectively, due to tax rate increase effective 1/1/1983.

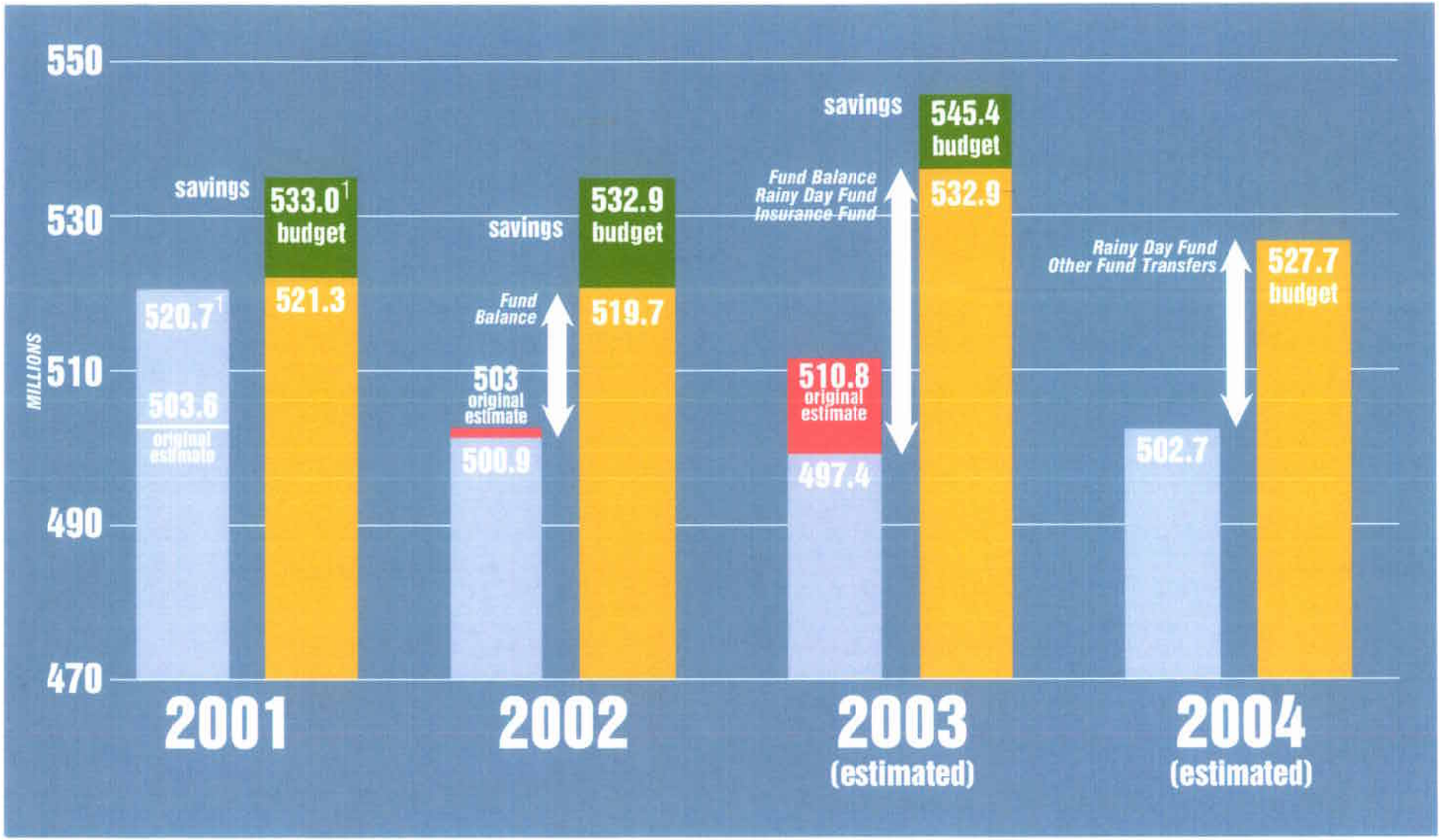
**2003 and 2004 are estimated at 1% and 2%, respectively. Actual 2003 rate as of 9/30 is (0.5)%

Annual Income Tax Growth: 1993-2004



Note: 2003 is as of 9/30/03. 2004 is estimated.


General Fund Year-End Balance
Millions
$40
$30
$20
$10
$-
$37.95
$37.56
$30.81
$29.79
$11.06
?
1998
1999
2000
2001
2002
Proj. '03



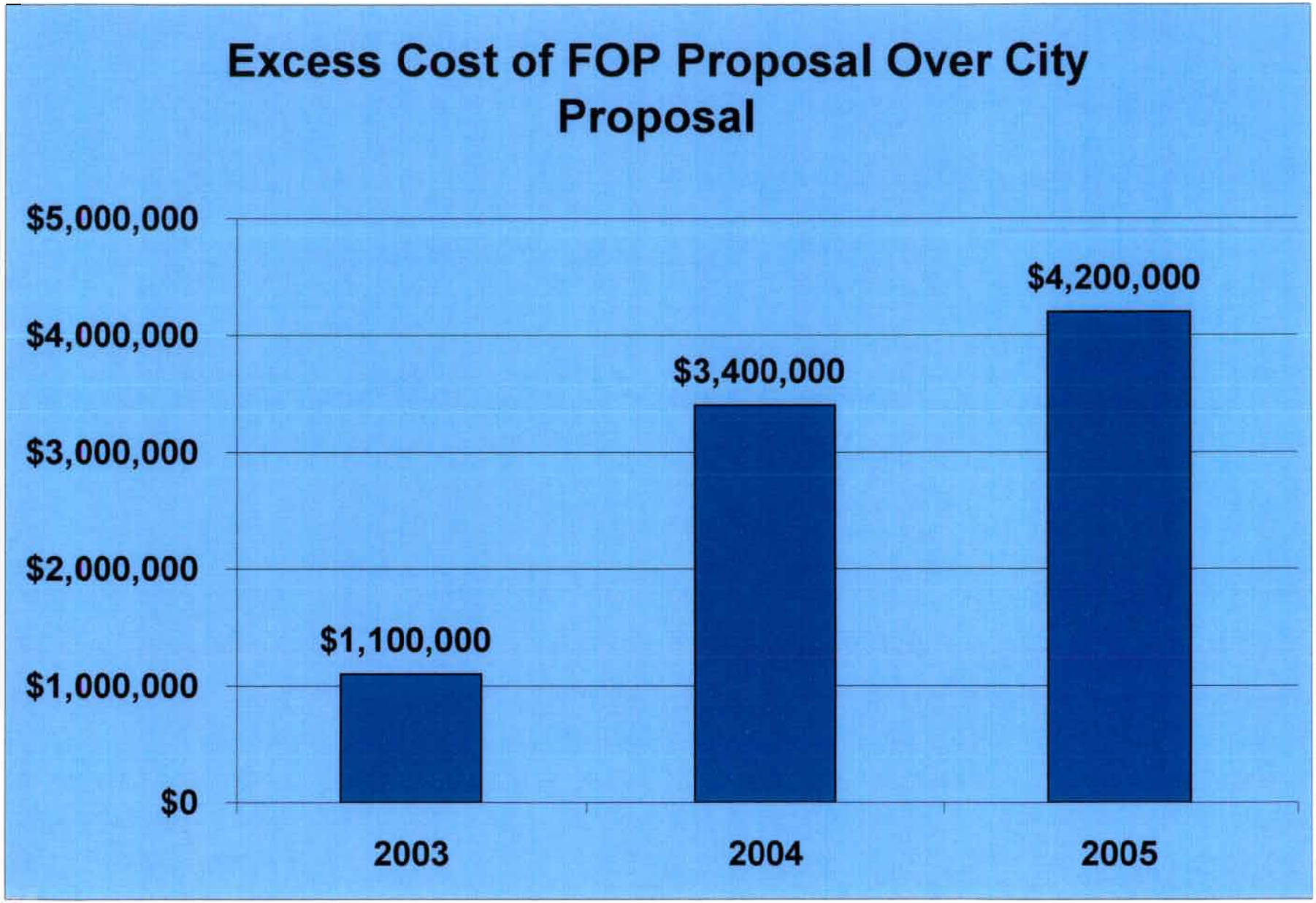
City of Columbus
Michael B. Coleman, Mayor

Department of Finance
Joel Taylor, Director

REVENUE
EXPENDITURES
REDUCED SPENDING
REDUCED REVENUE ESTIMATE

** Includes cancelled encumbrances and annual revenues, but not fund transfers or beginning balance*
1 Net of Building Services revenue and expenses moved out of General Fund in mid-2001)

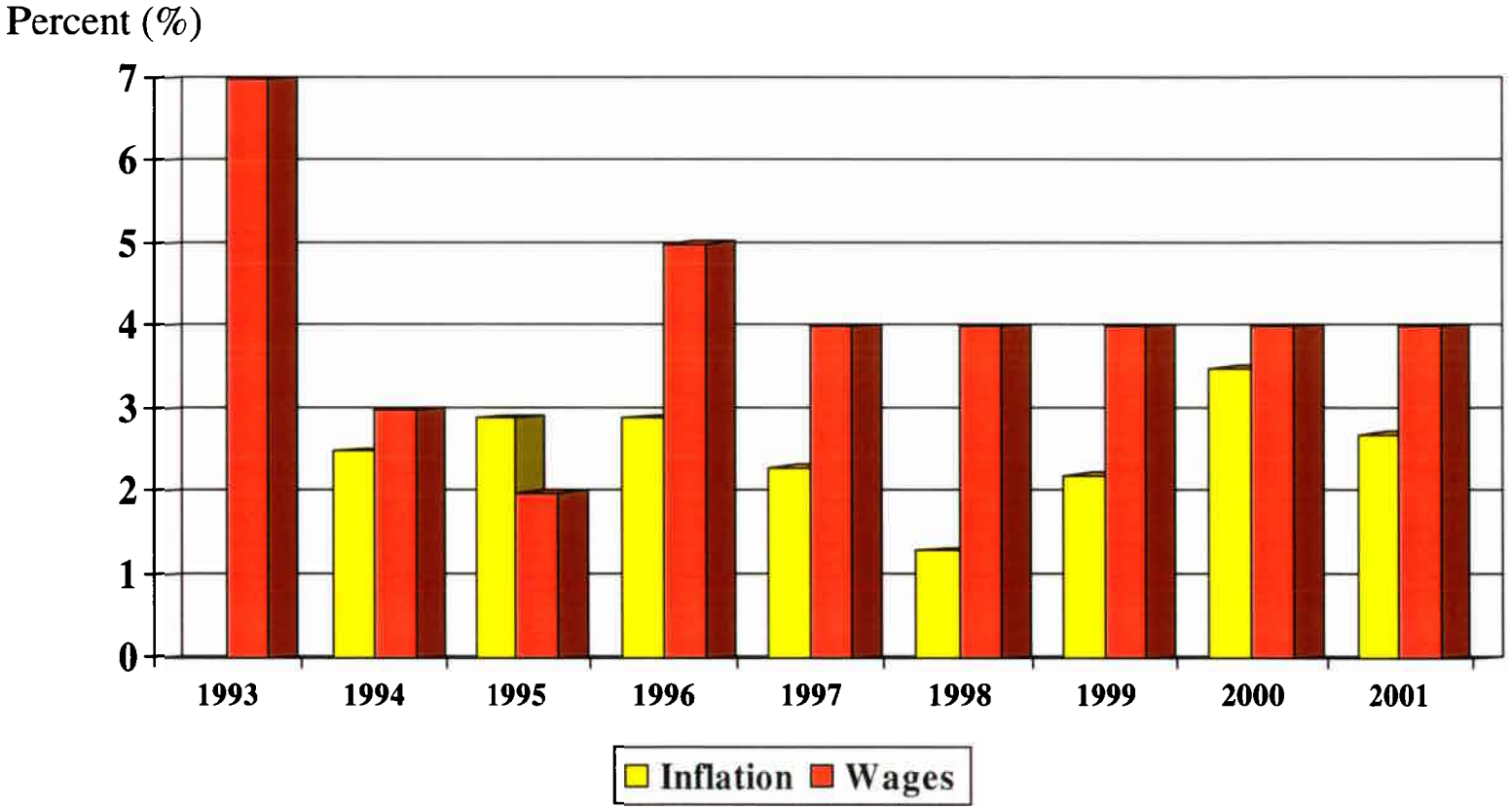
General Fund Expenditures and Revenues*


Excess Cost of FOP Proposal Over City Proposal
$5,000,000
$4,000,000
$3,000,000
$2,000,000
$1,000,000
$0
$1,100,000
$3,400,000
$4,200,000
2003
2004
2005

City of Columbus - 2003 Conciliation
Police Officer Wages v. Inflation 1993 - 2001

Year	CPI-2	Percent Annual Increase	Police Officer Top Base Wage	Percent Annual Increase
1993	142.1	N/A	$39,437	7.0%
1994	145.6	2.5	$40,622	3.0%
1995	149.6	2.9	$41,434	2.0%
1996	154.1	2.9	$43,534	5.0%
1997	157.6	2.3	$45,282	4.0%
1998	159.7	1.3	$47,091	4.0%
1999	163.2	2.2	$48,934	4.0%
2000	168.9	3.5	$50,939	4.0%
2001	173.5	2.7	$52,977	4.0%
Cumulative Increase		20.3		37.0%
Net % increases				16.7%
wages v. inflation				
Source CIP-W U.S. City Annual Average				

CITY OF COLUMBUS
2003 CONCILIATION
POLICE OFFICER WAGES V. INFLATION
1993-2001



Source: CPI-W U.S. city annual average

City of Columbus - 2003 Conciliation
Top Step Police Officer
2001 - 2002
Comparable Jurisdictions

Includes pension pick-up where appropriate

Rank	CITIES	TOTAL SALARY	Percentage of Columbus	Difference in Dollars
1	WASHINGTON DC	58,682.00	104.0%	-2,260.86
2	COLUMBUS*	56,421.14	100.0%	0.00
3	BUFFALO	51,072.00	90.5%	5,349.14
4	MILWAUKEE	50,864.06	90.2%	5,557.08
5	CINCINNATI	50,470.00	89.5%	5,951.14
6	DAYTON	48,505.60	86.0%	7,915.54
7	PITTSBURGH	48,420.32	85.8%	8,000.82
8	AKRON	44,948.80	79.7%	11,472.34
9	CLEVELAND	44,901.66	79.6%	11,519.48
10	INDIANAPOLIS*	43,121.52	76.4%	13,299.62
12	BOSTON	41,883.92	74.2%	14,537.22
11	MEMPHIS	41,680.51	73.9%	14,740.63
	DETROIT	No data		
	BALTIMORE	No data		
	ST LOUIS	No data		
	TOLEDO*	No data		
	AVERAGE	48,414.29	85.8%	8,006.85

*Employee Share of Pension Pick-up paid by Employer: Columbus 6.5%, Indianapolis 2%, Toledo 4.75%

City of Columbus - 2003 Conciliation
Top Step Police Officer
2002 - 2003
Comparable Jurisdictions

Includes pension pick-up where appropriate

Rank	CITIES	TOTAL SALARY	Percentage of Columbus	Difference in Dollars
1	WASHINGTON DC	61,029.00	106.0%	-3,479.44
2	COLUMBUS*	57,549.56	100.0%	0.00
3	BUFFALO	56,072.00	97.4%	1,477.56
4	TOLEDO*	53,427.19	92.8%	4,122.37
5	MILWAUKEE	52,517.14	91.3%	5,032.42
6	CINCINNATI	51,984.00	90.3%	5,565.56
7	ST LOUIS	51,168.00	88.9%	6,381.56
8	PITTSBURGH	50,356.80	87.5%	7,192.76
9	DAYTON	50,086.40	87.0%	7,463.16
10	AKRON	46,633.60	81.0%	10,915.96
11	CLEVELAND	46,473.22	80.8%	11,076.34
12	DETROIT	45,374.85	78.8%	12,174.71
13	INDIANAPOLIS*	45,192.28	78.5%	12,357.28
14	MEMPHIS	42,930.93	74.6%	14,618.63
15	BOSTON**	41,883.92	72.8%	15,665.64
	BALTIMORE	No data		
	AVERAGE	50,178.59	87.2%	7,370.97

Assumes 2% increase for Columbus

*Employee Share of Pension Pick-up paid by Employer: Columbus 6.5%, Indianapolis 3%, Toledo 5%

** Plus $3000 lump sum payment

City of Columbus - 2003 Conciliation
Top Step Police Officer
2003 - 2004
Comparable Jurisdictions
Includes pension pick-up where appropriate

Rank	CITIES	TOTAL SALARY	Percentage of Columbus	Difference in Dollars
1	WASHINGTON DC	64,081.00	108.1%	-4,791.99
2	BALTIMORE	59,382.00	100.2%	-92.99
3	COLUMBUS*	59,289.01	100.0%	0.00
4	BUFFALO	57,978.00	97.8%	1,311.01
5	TOLEDO*	53,427.19	90.1%	5,861.82
6	MILWAUKEE	52,517.14	88.6%	6,771.87
7	PITTSBURGH	52,371.07	88.3%	6,917.94
8	DAYTON	51,708.80	87.2%	7,580.21
9	CLEVELAND	49,332.15	83.2%	9,956.86
10	DETROIT	47,763.00	80.6%	11,526.01
11	AKRON	46,633.60	78.7%	12,655.41
12	MEMPHIS	46,265.10	78.0%	13,023.91
	BOSTON	No data		
	INDIANAPOLIS*	No data		
	ST LOUIS	No data		
	CINCINNATI	No data		
	AVERAGE	53,395.67	90.1%	5,893.34

Assumes 3% Increase for Columbus

*Employee Share of Pension Pick-up paid by Employer: Columbus 6.5%, Indianapolis 3%, Toledo 5%

City of Columbus - 2003 Conciliation
Top Step Police Officer
2004 - 2005
Comparable Jurisdictions

Includes pension pick-up where appropriate

Rank	CITIES	TOTAL SALARY	Percentage of Columbus	Difference in Dollars
1	COLUMBUS*	61,684.29	100.0%	0.00
2	TOLEDO*	54,755.24	88.8%	6,929.05
3	PITTSBURGH	54,486.86	88.3%	7,197.43
	BALTIMORE	No data		
	BOSTON	No data		
	BUFFALO	No data		
	DETROIT	No data		
	INDIANAPOLIS*	No data		
	MEMPHIS	No data		
	MILWAUKEE	No data		
	ST LOUIS	No data		
	WASHINGTON DC	No data		
	AKRON	No data		
	CINCINNATI	No data		
	CLEVELAND	No data		
	DAYTON	No data		
	AVERAGE	56,975.46	92.4%	4,708.83

*Employee Share of Pension Pick-up paid by Employer: Columbus 6.5%, Indianapolis 3%, Toledo 5.5%

Assumes 4% Increase for Columbus

A Conceptual Map of How a National Economic Recovery Feeds Into the Columbus Tax Base

U.S. Forecast items	Services	Manufacturing	CPI	Interest rates	Stock market
U.S. Economic Base Effects	Employment* Domestic sales Bus.Investment	Wages* Exports	Prices Retail sales	Home Refinance Home construction	Capital Gains
Potential Tax Base Effects	Wage tax Corporate tax	Hotel tax	Sales tax	Property tax Non-wage income tax Mortgage tax	(Schedule B,D) Estate tax
Columbus Tax Base	Wage tax	Hotel tax		Property tax	
Columbus "Drivers"	Gain commuters Lose residents working outside	Business travel Convention business		New Construction Re-Valuation every 3rd year State-imposed annual reduction factor	
Growth Sources For Columbus Tax Revenues	Columbus businesses add employees and raise wages	Discretionary spending		Home Construction inside Columbus Add'l office&hotel capacity needed Only 1/3 of MV growth goes to AV	

IMPLICATIONS: A relatively narrow part of any national economic recovery will make its way into the Columbus tax base. A jobless recovery will especially deprive Columbus of significant near-term tax benefits.

Potential for the Columbus Employment and Wage Base to Follow a National Recovery

- Growth in Columbus' Income Tax Requires
  - National growth to tap into Columbus Major Industries
  - National growth to stimulate High Salary Industries

- Columbus' major industries are low wage
- Columbus' high wage industries are minor

	Share of Employment (%)	Average Annual Earnings ($000)
Major		
Retail	13%	$20
Services	38	29
Minor		
Manufacturing	9%	$50
Transport, utilities	4	48
Wholesale trade	4	43

- A national recovery will have its greatest potential impact on the Columbus local tax base through large employment increases in the low wage jobs, which is unlikely in the near term.

- Even a large national recovery in employment in high wage industries will have a minor impact on the total Columbus tax base

CONCLUSION: Employment growth in Columbus will be greatest in low wage industries. Recovery in Columbus' income tax base will lag behind recovery in the Federal tax base.

Sources:
City of Columbus Economic Advisory Committee, Final Report, October 2001, Appendix E, Tables 1,5,6.
Greater Columbus Chamber of Commerce, Current Employment Statistics Fact Sheet, September 2003.

Potential Wage Increases in Columbus May Be Limited in the Near Term

- Unemployment will need to fall before pressure builds to raise wages.
- Inflation will need to rise before COLAs produce significant wage gains.
- The 1998-2000 period of high labor demand and labor shortages places an upper bound on potential for wage gains in Columbus

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Growth in Average Annual Earnings During Peak Labor Demand
Annual growth rate 1998-2000

High Wage Industries	
Manufacturing	1.2%
Transportation and utilities	0.8
Wholesale trade	0.7
Low Wage Industries	
Retail	0.6%
Services	1.4

CONCLUSION: Wage growth potential is unlikely to match inflation in the near term. Columbus income tax will not benefit significantly from wage gains.

Neither employment gains nor wage gains are likely to be significant drivers of growth in Columbus' income tax in the near term.

Source:
City of Columbus Economic Advisory Committee, Final Report, October 2001, Appendix E, Table 5