

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD
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In the Matter of Fact Finding	*	ADJUSTED REPORT OF
Between	*	FINDINGS
	*	AND
FRATERNAL ORDER OF POLICE	*	RECOMMENDATIONS
LODGE NO. 25	*	
	*	03-MED-09-0960
	*	03-MED-09-0961
and	*	
	*	Anna DuVal Smith
CITY OF LAKEWOOD	*	Fact Finder
	*	

Appearances

For the Fraternal Order of Police Lodge No. 25:

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I. SUBMISSION

The Fraternal Order of Police Western Cuyahoga Lodge No. 25 Lakewood Division (“FOP”) represents all full-time, sworn law enforcement officers below the rank of sergeant and, in a second unit, all full-time officers in the rank of sergeant through captain exclusive of the Chief of Police in the City of Lakewood, Ohio. Together, these number approximate 90 sworn officers. The previous collective bargaining agreement expired on December 31, 2003, but because of a new City administration, negotiations for a successor agreement was postponed. On August 19, 2004, the undersigned, who had been appointed Fact Finder on December 10, 2003, pursuant to 4117.14 O.R.C. and the mutual agreement of the parties, was informed mediation assistance was desired. The Fact Finder accordingly met with the parties in mediation on October 26, 2004, January 21 and January 31, 2005, during which time the issues were narrowed but a complete agreement was not achieved. The matter therefore came for hearing at 10:00 a.m. on March 18, 2005, at City Hall in Lakewood, before the undersigned for the purpose of fact-finding with recommendations on the following issues: Article 7 - Overtime (compensation on holidays worked), Article 9 - Wages, Article 12 - Longevity, Article 14 - Vacation, Article 16 - Health Care, a proposed new article on firearms proficiency, and a “me-too” provision. During the course of the hearing the parties settled the overtime and health care committee issues, which agreements are incorporated herein as if written at length as Fact Finder recommendations. Testifying on behalf of the FOP were Edward Favre, Bruce Wilkins and Frank A. Suponic, CPA, CFE. Giving evidence for the City of Lakewood were Jennifer Demmerly and Vjekoslav Nogalo. Both parties were afforded a complete opportunity to examine witnesses (who were sworn or affirmed), to present written evidence, and to argue their respective positions. The oral hearing concluded at 1:35 p.m. on March 18, 2005, whereupon the record was closed. The Fact Finder’s Report of Findings and Recommendations was issued on May 11, 2005, erroneously reporting that vacations had been settled during the March 18 hearing and consequently omitting

findings and recommendations on that issue. The Fact Finder therefore petitioned the State Employment Relations Board to adjust her report. This motion was granted on June 9, 2005, leading to this Adjusted Report of Findings and Recommendations.

In rendering these Findings and Recommendations, the Fact Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements 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) 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

II. BACKGROUND

The City of Lakewood is a western “inner ring” suburb of Cleveland, Ohio in Cuyahoga County bordered on the north by Lake Erie, on the west by the City of Rocky River and on the south and east by the City of Cleveland. Its population has been declining since at least 1970, standing at approximately 57,000 in the year 2000. In mid-July of 2004 Moody’s Investors Service noted a moderately growing tax base of \$2.6 billion, gradual expansion of its commercial and light industrial sectors, and comparatively favorable unemployment rates, resident wealth levels and housing values. However, it also found a weakening financial position for the City, which recorded two consecutive years of operating deficits (\$1.25 million in fiscal year 2002 and \$2.7 million in fiscal year 2003) after years of operating surpluses had brought the General Fund balance to \$9.2 million in fiscal year 2001, which balance was 27.6% of general fund revenues. Moody’s opined that the City would be challenged to regain stability and strengthen its financial position given the weakness in the regional economy. It assigned a Aa2 rating with a negative outlook to the new \$4.27 million bonds. Financial exhibits submitted by the City show continued weakening of its position in fiscal year 2004 with the General Fund balance (cash

basis) declining from \$6.3 million in fiscal year 2002 to \$3.8 million in fiscal year 2003 and \$0.9 million in fiscal year 2004, its largest in nearly 15 years. Among the factors contributing to the City's financial condition have been a freeze in the state's local government funding, a decline in estate taxes and interest earnings, stagnant or decreasing income and property revenue, a 27th pay period in 2004, a living-wage ordinance, transfers from the general fund to subsidize the City's senior citizen program and its Winterhurst skating rink, rising health insurance costs, and fire department overtime.

III. ISSUES

Wages

The FOP seeks 2 percent retroactive for 2004, 3 percent for 2005 and 4 percent in 2006, which it says the City can afford despite the expenditure of \$6.3 million in cash reserve over the past several years. It submits that its position is supported by the SERB Benchmark Report of 30 Cuyahoga County police departments which shows the Lakewood patrol officer first class as below average (\$53,681 v. \$53,824). For the West Shore Communities preferred by the FOP for comparison, the disparity is greater, these communities having an average first class patrol officer wage of \$56,832.¹ In terms of percentage increases, the FOP submits data to show that the average for 2004-06 is slightly more than 3 percent per year. In light of this, it argues, its request for 9 percent over three years is more than reasonable.

The City's position is that it cannot afford what the FOP seeks. In the first place, it believes the FOP entered factfinding having agreed to no increase in the first year of the contract (2004). Regardless, the City does not have the money for any 2004 wage increase. In the second place, it says it cannot afford what the FOP seeks for 2005 and 2006, pointing out that whatever the FOP achieves in this factfinding will be extended to other City employees. For 2005 it offers 2.5%, saying this represents about \$1 million city wide in wages and benefits affected by wages.

¹ Fairview Park, North Olmsted, Rocky River and Westlake.

For 2006 it proposes 2.5% again regardless of what happens at the polls, but as much as another 2% (for a total of 4.5%) if voters approve a tax increase this year. Assuming success at the polls, the FOP would have the ability to demand as much as 4.5% for 2006 and to take its demand to “baseball style” interest arbitration if the City rejects it. The City submits that its offer for 2006 will cost \$1–\$1.8 million (\$2–\$2.8 million for the entire contract period), money which it does not have without a tax increase or reduction in services.

Health Care

The City currently provides full-time officers and their dependents fully-paid health care plans. The self-insured plan design is as follows:

100% In Network
70%/30% Out-of-Network
\$1500/\$3,000 Out-of-Pocket
\$150/\$300 Annual Deductible

The City now want employees to contribute \$100 (family)/\$60 (single) towards this plan (“Option A”) and to offer an alternative (“Option B”) with no employee contribution:

90%/10% In Network
70%/30% Out-of-Network
\$2,000/\$4,000 Out-of-Pocket
\$300/\$600 Annual Deductible

It contends it needs employees to begin contributing to the cost of health care because of the rapidly growing costs of its self-insured program which rose 23% between 2003 and 2004 and which its third-party administrator predicts will increase by the same amount in 2005. It further points out that nonunion City employees have been making a \$156/month contribution for the traditional plan (family) and \$60/month for Option B since January 2005, but admits that 80% took the traditional Option A despite its higher contribution.

The FOP is not interested in Option B, but is willing to contribute \$50 (family)/\$25 (single) per month to Option A. It points out that what the City was asking in mediation (2% wage increase and \$156 family contribution) would result in a negative standard of living for a first class patrol officer.

Longevity

The current longevity entitlement is for \$100 per year of service commencing at year 5 and capped at year 20.

Relying on data from its comparable communities, the FOP acknowledges that most others cap this benefit at 25 years but requests that its cap (at 20 years) be removed entirely. The City is opposed to this enhancement on the basis that no other employee in the City has such a payout. Even if capped at 25 years, it would cost the City \$18,500 for this bargaining unit, \$113,800 when extended to the others.

Vacation

The current vacation benefit is for 2 weeks after one year of service, 3 weeks after 7 years, 4 weeks after 13 years and 5 weeks after 19 years. Employees hired after January 1, 1989 must use vacation hours earned in a calendar year during that calendar year. Employees hired before January 1, 1989, may accumulate up to 50 days of vacation time. The FOP wants to improve annual vacation leave to what it says is the industry standard of 5-year steps, adding one week at each step (i.e., 3/4/5/6 weeks at 5/10/15/20 years respectively). It also wishes to eliminate the restriction on post-1989 hirees for banking unused vacation as was granted to Lakewood's firefighters in February 2005. The City opposes the FOP's request saying that adding even one week after 25 years of service would cost it \$34,000 over the remaining two years of the Agreement if granted only to the FOP. If it extended this improvement to its other employees for the sake of parity, it would cost \$157,000.

Firearms Proficiency

The FOP seeks a new benefit for 2005 to develop firearms proficiency. Under its plan, officers who achieve the State of Ohio standards set forth in 109.801 O.R.C. would receive the designation of Marksman and 2 days (16 hours) of compensatory time or pay (at the officer's option). Under the FOP's plan the City would establish two higher levels of proficiency, Sharpshooter and Expert, which would entitle the qualifying officer to 3 days (24 hours) and 4

days (32 hours) respectively of compensatory time or pay, again as the officer chooses. The City opposes this proposal, again based on cost since it would be translated in some fashion to all employees.

“Me - Too”

Finally, the FOP requests a Memorandum of Understanding (which it calls a “Me-Too” provision) wherein the parties would be required to meet and renegotiate any matter that a safety force union negotiates or is awarded for 2004-2006 that is economically more beneficial than what the FOP achieves. It points out that the City has granted such a provision in the past. The City resists this proposal saying that the FOP is currently ahead of fire department employees by an average of \$769 in straight pay. It believes other factors such as vacation pay make the two units more economically equivalent but admits that the fire union does not agree. Thus, it argues, a “me too” would give the FOP an unfair advantage.

IV. FINDINGS AND RECOMMENDATIONS

Wages

Negotiations in this round of bargaining were slow to start as the unions allowed the new administration time to settle in. They then they progressed with difficulty in the face of economic and financial claims made by the City. Underlying the City’s offers has been its position that its financial plight trumps wage comparability with similar units in the region. The FOP’s view is that its members ought not be required to suffer real losses because the City believes it has no money when, in the FOP’s view, there is money to maintain their relative position. The reality, as demonstrated in factfinding, is that the City of Lakewood has been living beyond its means and now must make difficult decisions to bring its house in order. This will inevitably mean some combination of increasing revenue and control of expenditure growth. It may mean layoffs. It may mean elimination of some programs and/or the imposition of user fees to keep valued ones going for some segments of the population. It may mean increased

taxation. It may also mean moderation of wage increases or even freezes. These are decisions beyond the authority of the Fact Finder and will ultimately be made by the voters themselves and through their elected officials or by conciliators.

In this proceeding, the Fact Finder is required to consider both wage comparability and the employer's ability to fund her recommendation. She cannot simply dismiss one or the other out of hand. At the conclusion of mediation, the Fact Finder made a "mediator's recommendation" based on what she had learned in caucuses and joint meetings. At the time, she knew and reminded the parties that she had yet to "find the facts" and that her "fact finder's recommendation" could depart from her "mediator's recommendation" as a function of what was brought out in the hearing. As stated above, the evidence did support the City's claim of limited resources. Even the FOP's expert witness agreed that the City's witnesses were forthright and candid. However, the evidence also revealed that the present general fund balance is, in part, the result of some large transfers to support some discretionary enterprise fund programs. In addition, the FOP brought SERB data on wage settlements in other northeast Ohio communities. These reports show Lakewood police to be the lowest paid in 2003 of the West Shore Communities², but not far from the inner ring Cleveland suburbs which have declining populations.³ All, except North Olmsted, had wage increases in 2004 of 3% or better. Thus, a wage freeze in Lakewood will do serious damage to Lakewood's relative wage position unless it is rapidly made up as it was in North Olmsted with above-market increases in the immediate succeeding years. For this reason, while I recommend no increase for 2004 when the FOP was not obliged to make contributions toward health insurance, I recommend larger wage increases for 2005 and 2006 than the City has offered. According to the City's figures, this will cost it \$1.1

²West Shore Communities for which data were provided include, in addition to Lakewood, Fairview Park, North Olmsted, Rocky River and Westlake. The latter two have not suffered the population decline the other three have.

³Fairview Park, North Olmsted, Cleveland Heights, Warrensville Heights, Garfield Heights, Brooklyn, Euclid, University Heights are the inner ring, declining population cities reported. These eight had a mean wage for first class officers of \$54,300 in 2003 compared to Lakewood's of \$53,700.

million, \$100,000 more than its own offer (if it extends the same to other City employees), an amount which the City needs to and can finance without compromising safety. For 2006, I recommend the City's bracket with baseball-style arbitration, but with a range of 3% (guaranteed) to 5% (maximum). My wage recommendation is: 0% in 2004, 3% for 2005, and 3-5% for 2006.

Health Care

Turning now to healthcare, the FOP came to factfinding with a proposal for a committee to address this challenging issue. The City agreed to this program during the hearing. Both parties also made significant movement on the cost to employees of the traditional plan (Option A) with the City reducing its demand by one-third and the FOP, for the first time, agreeing to some cost-sharing. The Fact Finder commends the parties for taking these steps, particularly for the committee which should be able to find savings that will benefit all parties. Additionally, the FOP has courageously recognized the reality of today's health cost environment. The Fact Finder nevertheless recommends additional movement by both parties on cost sharing: Option A should be available at a cost to employees in 2005 of \$75 family/\$40 single.

Vacation

There is no question that Lakewood has the worst vacation leave benefit of the West Shore cities and is tied for bottom of the inner ring, declining population communities for which data were submitted. Lakewood's police wait longer for each additional week, top out sooner and have a lower maximum than nearly every other police force save that in Cleveland Heights. Improvement is warranted but the Fact-Finder cannot ignore the reality of the pressure for internal parity on such a benefit. Indeed, the FOP is itself seeking parity with the Lakewood fire fighters on banking of unused vacation. Because of the costs citywide, the Fact-Finder recommends a sixth week of vacation at 25 years and that the banking restriction on post-January 1, 1989 hires be lifted to conform with the fire department. Both should be effective in 2006.

Longevity and Firearms Proficiency

Some improvement in these benefits are warranted by virtue of the comparables (Union Ex. 6) and the sacrifice the FOP is asked to take in terms of 2004 wages and in consideration for contributing to the cost of health care for the first time, but its demands go too far. Longevity should be extended beyond the 20th year but should be capped at \$2500. A firearms proficiency benefit is recommended at the basic level only because the City does not have the wherewithall at this time to provide the more advanced levels. Both should be effective in the third year of the contract because it is more important for the future to put scarce dollars into wages.

Longevity: \$100/year, year 5 up to 25 years = \$2,500 effective 2006

Firearms: \$500 effective 2006.

Me-Too

The FOP's proposal is recommended in its entirety in recognition of it being the lead union in these difficult negotiations.

V. SUMMARY OF RECOMMENDATIONS

<u>Item</u>	<u>Recommendation</u>
Wages	0% - 3%- {3%-5%}
Health Care	Option A: \$75 family/\$40 Single, effective 2005 Option B: No cost to employee
Vacation	Add six weeks at 25 years and lift banking restriction for employees hired after January 1, 1989, both effective 2006
Longevity	\$100/year, year 5 up to 25 - \$2,500, effective 2006
Firearms Proficiency	New benefit of \$500 annually, effective 2006
Me-Too	As proposed by the FOP
All others	As previously agreed by the parties

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact Finder

Cuyahoga County, Ohio
June 29, 2005

CERTIFICATE OF SERVICE

I certify that on the 29th day of June 2005, I served the foregoing Report of Fact Finder upon each of the parties to this matter by express mailing a copy to them at their respective addresses as shown below:

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I further certify that on the 29th day of June 2005, I submitted this Report by express mailing it to the State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-5213.



Anna DuVal Smith, Ph.D.
Fact Finder