FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
JULY 20, 2006

In the Matter of:	)	
The City of Parma	)	
and	)	SERB Case No. 05-MED-01-0047
Ohio Patrolmen's Benevolent Association	)	

APPEARANCES

For the Union:

Randall Weltman, Attorney for the OPBA
Ken Gillissie, OPBA Director
Daniel Heinz, Negotiating Committee
Norm Kekic, Negotiating Committee
Michael Klein, Negotiation Committee

For the City:

Gary Johnson, Attorney for the City of Parma
Gregory Baeppler, Safety Director City of Parma

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the patrolmen of the Parma Police Department represented by the Ohio Patrolmen's Benevolent Association (OPBA) and the City of Parma. Prior to the Fact Finding Hearing, the parties engaged in numerous negotiating sessions but they were unable to come to a final agreement. At the request of the parties, The Fact Finder conducted two (2) mediation sessions during which a number of outstanding issues were settled. However, the parties were still unable to reach agreement on a new contract and three issues remain on the table. The major stumbling block is the City's desire to change its medical insurance plan. This demand raised questions about the cost of the Parma Retiree Reimbursement Plan (retiree benefit plan) and the relationship between the cost of health care for currently employed police officers vis-à-vis retired officers. Finally, the parties could not agree on the size of the wage package.

Consequently, a Fact Finding Hearing was held on June 24, 2006. The Hearing started at 10:00 A.M. in the Parma City Building. Because the issues had been thoroughly discussed during the mediation sessions, the Hearing was relatively brief and it was completed in approximately three hours.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

(1) Past collectively bargained agreements, if any.
(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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.

(4) The lawful authority of the public employer.
(5) Any stipulations of the parties.
(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

Introduction:

There are a number of background issues that need to be discussed to give some understanding of the parties' positions. First, questions about the state of the City's financial health are central to the disagreement between the parties. The City claims that it has severe financial problems. The City's representatives pointed out General Fund revenues had been stagnant for a number of years and this fact coupled with rising costs had led to a situation where the City had to find ways to cut expenditures. The City stated that it had cut personnel costs in an attempt to balance revenues and expenditures. The City presented evidence that while it had not laid-off any employees, it had reduced the size of its labor force through attrition. In addition, both parties agree that the police department has lost twenty individuals over the past years none of who have not been replaced. Parenthetically, the Union argues that the police department is in a position where the manpower shortage is becoming critical.

The Union argues that the City's financial condition is not as bad as the City contends. The Union presented evidence to that effect and pointed out that the City has historically had a small carryover balance at the end of the year. In addition, the Union pointed out that the City's financial position improved with the recent passage of a tax levy. The City responded that the revenues generated by the levy would not materially affect the financial state of the City and that these funds would cover revenue shortfalls in other areas of the budget. The City also pointed out that its carryover balance had been declining for a number of years and it claimed that this trend proved that its financial condition was continuing to deteriorate.

The Fact Finder believes that the data in the record support a finding that the City is facing financial problems. This is not meant to suggest that the City is facing a financial crisis, but it does mean that the Mayor and City Council must take some steps to try to control expenditures. Given the uncertain economic climate in Northeast Ohio, Parma like many other jurisdictions cannot count on an improvement in the overall economy to generate enough revenue to alleviate the situation.

This Fact Finder has stated in other reports that Cities cannot simply claim that they are facing a financial emergency as a way to avoid meeting reasonable demands put forth by the Unions that represent their employees. If a City is claiming that it has a financial problem, it must take some steps designed to meet and solve the problem. There is a list of things that Neutrals have used to show that a City is facing a financial crisis including but not limited to layoffs, cuts in basic services, postponing necessary capital expenditures, etc. Absent some actions intended to meet a looming (existent) problem protestations of an inability to pay ring hollow.

However, in this situation the City has taken steps to reduce spending. Theoretically, a decision not to replace a worker who retires because of a lack of funds has the same effect on the City payroll as a layoff. In either case, the amount of labor available to the City is reduced. Layoffs are a visible sign of financial distress. However, attrition cuts as deeply, but in a less visible way. In some ways it is simply a more humane way to downsize. Therefore, the Fact Finder finds that by allowing its labor force to fall precipitously over the last few years, the City's actions have shown that it is attempting to deal with significant financial problems. Therefore, the City has met the threshold test that shows that the inability to pay argument it put forth during negotiations is not simply an excuse for an unwillingness to pay.

The inability to pay has come to mean that a public employer cannot meet the Union's demands because of a lack of funds. That is, the inability to pay is a bar to granting any wage and benefit increases. This is the strict interpretation of the meaning of the phrase. However, a public employer may be in a situation where it has managed its resources in such a way that it has enough money to pay some wage and benefit enhancements, but not in the amount that the Union desires. In other words an employer may not have an inability to pay in the strict sense, but it may have an inability to meet the Union's demand. This seems to be the situation in Parma.

Parma's representatives stressed that in order to meet the needs of the citizenry with limited resources that the City had to find a way to control expenditures, especially health care spending which is using a greater percentage of the City's operating funds every year. As a result, the City argues that it must change its health insurance plan. The City's proposal is for the employees to pay a portion of their health care premiums. This proposal would dramatically increase the cost of health insurance for each member of the bargaining unit and all other City employees. The Union vehemently objected to the City's proposal.

Consequently, health care cost containment became a major stumbling block in the parties' attempts to come to agreement on a new contract. The discussions over health care centered on three issues: 1) the scope of the problem and ways to solve it. 2) the impact that retirees were having on the health care costs of the City, and 3) the need for the parties to address the issue in a constructive way. This latter point was a major concern of the Union.

The Union negotiating committee stated that the expired contract had language that required the formation of a health care committee that would be charged with evaluating the City's health care plan(s) and making recommendations for changes. The Union stated, and the City agreed, that the committee had not been formed and no discussions about health care cost containment had taken place. The Union argued that such a committee might have been able to find ways to control the growth in health insurance costs, without increasing the cost of insurance to the City's employees. The Union demanded that the contract contain language mandating that a health care committee be formed and meet over the life of the contract. The City agreed to this proposal and stated that it would move forward on this issue.

The Fact Finder agrees with that recommendation. Language covering the formation of a health care committee should be included in the contract. Furthermore, if the committee does not meet and work on the problems surrounding the City's insurance plan, the Fact Finder urges the union membership to use the grievance procedure as a way to insure that both parties strictly follow the terms of the agreement.

The discussion(s) on health care led inexorably to an examination of the City's relationship with its retirees. The City reimburses retirees for their health care expenditures until they reach the age where they go on Medicare. This provision is unique throughout the area and has over the years become extremely costly. Moreover, as the cost of medical insurance continues to rise, the retiree benefit has taken an evergreater proportion of the City's budget. This report is not the place to discuss the complexities of this issue. Suffice it to say that the program has a long and tumultuous history and the City lost a court case in 1994 when it tried to end the provision. However, the City is again arguing that there must be some change in the retiree health benefit if it is to control the rising cost of medical insurance. The City's proposal is that no currently employed individuals would be eligible for the benefit. This position mirrors the recommendation Fact Finder Graham included in his report on the recently completed negotiations between the International Association of Fire Fighters (IAFF) and the City. In effect, this means that over time the cost of the benefit would fall to zero as the cadre of already retired employees reaches the age for enrollment in Medicare. The parties agreed that this would take approximately thirteen (13) years.

Initially, the Union was against changing the retiree benefit. However, during negotiations and the two mediation sessions, the Union was forced to face the fact that the City probably had to make some changes in its health insurance plan to lessen the impact of rising insurance costs on its General Fund. Therefore, it became increasingly clear that currently working employees were facing the prospect of substantially higher medical insurance costs and that part of their increased premiums would be used to subsidize the retiree benefit plan. The Union negotiating committee believed that this was unfair to current employees. The Union came to the position that if the cost of medical insurance had to increase, then the pain should be shared between current and retired employees. The Union was not pleased with this solution, but it felt that pain sharing was the fairest way to implement changes in the medical plan.

The Union had another problem with the City's proposal. The Union argued that some currently employed individuals had made plans to retire based on their eligibility for the retiree benefit. The Union believed that it was unfair that these individuals be precluded from retiring because of the change in the plan. That is, if the City's position was accepted then any currently employed patrolman would not be eligible for the retiree benefit plan, and, as a result, some current employees would not be able to retire. The Union contended that this is unacceptable. Instead, the Union stated that any change regarding current employees' eligibility for the plan must be phased in over a period of time so that current employees can make realistic plans for their retirement.

Despite all of the discussions and attempts to find a settlement, the City's proposed changes in the medical plan and the interrelated issue of the retiree health benefit is (are) the main issues separating the parties. The other issues, including the wage package, could probably have been settled but the parties could not agree on the medical issue.

Issue: Article 26 - Salary Schedule

Union Position: The Union demand is for five (5%) percent per year for the prospective contract. In addition the Union demands that any wage increase be retroactive to the start of the contract.

City Position: The City is offering three (3%) percent per year for each year of the prospective contract and it desires to add an additional step to the salary schedule in the second and third years.

Discussion: The Union argues that the patrolmen's job has become more onerous because of the lack of officers in the Department. Consequently, the Union believes that the patrolmen should have a wage increase of five (5%) per year to compensate the officers for the difficulties they face in doing their job.

The City rejects the Union's argument. The City testified that three (3%) percent was all that it could afford. In addition, the City showed that all other salaried and hourly workers had settled on a three (3%) percent increase. The City argued that the pattern settlement in Parma was for a three (3%) percent wage increase. In addition, the City also presented data showing that three (3%) was the standard raise throughout Ohio. Therefore, the City argued that external comparables also showed that a three (3%) raise was in accord with other contracts signed by police officers throughout the State. Consequently, the City believes that three (3%) percent is an acceptable raise when all the facts are considered.

The Fact Finder is mindful that the Union membership is working long hours and that the Parma Police Department is undermanned. However, the evidence shows that the Parma patrolmen are not underpaid when compared to other jurisdictions. Moreover, the City's financial condition limits the amount that the City can afford to pay and the internal comparables indicate that all other City employees who have received raises have settled for three (3%). Consequently, the Fact Finder believes that the City proved that a three (3%) percent wage increase is acceptable when all of the evidence is considered.

The parties did agree to change the wage scale and add a new top step. Currently, the top step on the wage scale is year four (4). The parties agreed to add a new top step after the fifth (5) year of service. This step will increase the time needed to reach the top of the scale by one year. However, given the service distribution of the current cadre of patrol officers, the effect on the current work force is minimal.

Finding of Fact: The Union did not prove its point that the City's wage offer is deficient. In addition, the parties agreed that the wage increase would be retroactive to January 1, 2005.

Suggested Language: The wage scale in the contract shall be amended to show a three (3%) percent increase in each year of the prospective contract retroactive to January 1, 2005 with a fifth (5) year added to the current scale in the amount proposed by the City. That is, a patrolman will reach the top of the scale after five (5) years. The 2006 salary schedule shall consist of five (5) steps; $43, 057.00, $45,589.00, $48,122.00, $54,000.00, and $59,322.00. The salary schedule for 2007 shall consist of the following five steps; $44,348.00, $46,956.00, $49,565.00, $55,720.00, and $61,300.00.

Issue: Article 24 – Insurance

Union Position: The Union demand is for the status quo.

City Position: The City is attempting to change its health plan. The current plan offers first dollar coverage. The City desires to change the plan to one that is more in line with the plans offered by other employers. The major feature of the plan redesign is that the employees will pay co-pays and deductibles. In addition, the City is proposing to phase out the retiree health benefit whereby the City reimburses retired police officers for their payments to the Police and Fire Pension Fund for health care costs.

Note: The retiree health benefit will be discussed before the proposed health insurance plan changes.

Discussion: The City agreed to pay for the health insurance costs of retired officers until they were eligible for Medicare a number of years ago. At the time the City agreed to the proposal the cost was minimal and the rate of inflation in heath care was less than the overall rate of inflation. Therefore, the City believed that it was helping its retirees at little cost to the General Fund. Unfortunately, the City was mistaken in its assumptions about the cost of health care, and currently, the City pays approximately seven hundred and fifty ($750,000.00) thousand dollars a year to fund the benefit. Therefore, the retiree health benefit is now a significant drain on the City's General Fund.

The City recognized that it was facing a problem twelve years ago and attempted to negotiate the benefit out of the contract. However, the courts determined that the plan should stay in effect. Consequently, the City's exposure has increased every year. At the present time, the City's financial condition has deteriorated to the point that the City believes that it must act to contain the program's cost. The City raised the issue with the Firefighters during the just completed negotiations for their new contract and the Fact Finder/Conciliator in that dispute determined that currently employed firefighters would not be eligible for the benefit. In this way the City's exposure would gradually decrease as retired firefighters reached the age where Medicare would cover them. The City attempted to put the same language into the police patrolmen's contract.

The City's demand led to a wide-ranging discussion of the entire retiree benefit. The Union believed that the City's proposal was unfair to officers who were planning to retire and had factored the retiree health benefit into their retirement calculations. The Union demanded that there be a phase in period before the benefit disappeared. That is, the Union is against the City's position, but if the employee retirement benefit is going to end, then there should be enough time for officers who are contemplating retirement to adjust their plans to take into account the increased cost of the benefit.

The Union also grudgingly accepted the fact that the City's health plan is going to change. The City has stated that all salaried employees will go on the new plan and a number of Unions have agreed to the plan. Therefore, the OPBA believes that the plan will ultimately replace the current plan. The Union then tried to change the specifics of the plan to protect its membership to the best of its ability. (Specifics to be discussed below.)

The City's overarching goal is to cut the rate of increase in its health care expenditures. In this regard Parma is the same as every other employer, both public and private, in the United States. The Union argues that the cost of the City's new plan might be extremely costly for the employee. Therefore, the parties worked out a compromise whereby the retiree benefit would be frozen, but the cost to current employees would be more manageable. Specifically, the contribution of currently retired individuals would be frozen at five hundred ($500.00) dollars per month for family coverage and two hundred ($200.00) dollars per month for single coverage effective July 1, 2006. In addition, all co-pays, co-insurance deductibles, prescriptions, and any other reimbursable expense under the retiree benefit plan are discontinued as of January 1, 2007.

By freezing the retiree benefit, the City projects that it will save enough money that the new insurance plan's cost to the current employees can be kept to a manageable level. In addition, the savings generated will also allow current employees who are close to retirement and who factored the retiree benefit into to their retirement planning to enjoy some benefits. While the City must contain costs, it is willing to spend whatever it saves on changes in the retiree health benefit paid to already retired individuals on benefits for current employees who are close to retirement age. However, the City continually stated that it cannot afford to pay more for retiree health benefits. This means that whatever changes are made in the retiree benefit plan must be revenue and expenditure neutral. In this vein, the parties agreed that if over ten (10) individuals retire from the police department before February 1, 2008, then the reimbursement amount may have to be further reduced to make the plan fit into the City's budget.

The Fact Finder is aware of the fact that the current retirees will face increased medical costs under the plan that he is proposing. However, every single individual in the United States is facing increased costs of health insurance. Equity demands that the pain be spread over as wide a population as possible in order to minimize the impact on every individual. Moreover, the evidence shows that Parma's current plan is unique. Usually when a police officer or firefighter retires, he/she pays some of the cost of his/her medical insurance. In this instance the City will continue to pay a significant part of the cost for retirees. In addition, the discussions on this issue did not consider the situation where a retiree may have started a new career or have a family member who works in a job that offers insurance. Consequently, the cost to some retirees may be small.

Regardless of any other fact, the Fact Finder believes that changing times necessitate changing ways of thinking. In this case, the Fact Finder believes that all individuals covered by the City's health plan should be treated equally. In passing the Fact Finder notes that this is similar to the situation faced by retirees of General Motors who saw their health coverage altered because the Company was facing bankruptcy. Unfortunately, until the Federal Government devises a way out of the medical cost spiral employees, both active and retired, will continue to pay more for their insurance.

Because the retiree benefit is capped, the Fact Finder is also recommending that the retiree health benefit remain in force until February 1, 2008. This gives officers who are considering retirement enough time to change their plans to adapt to the changing health care cost situation.

The evidence proves that the City's ability to provide services to the citizens is being adversely affected by the cost of the program. The Fact Finder does not believe that current employees and the citizens of the City should be penalized by the continuation of an ill-conceived program.

Finding of Fact: Enrollment in the City's retiree health care benefit plan shall end on February 1, 2008 for currently employed workers. The benefit shall be capped at five hundred ($500.00) dollars per month for a family plan and two hundred ($200.00) per month for a single plan for all persons enrolled in the program. In addition, all other ancillary payments relating to medical coverage under the plan will end. In the event that a family member enrolls in Medicare or has other coverage that results in a reduction of the normal premium, then City's contribution shall be reduced concomitantly.

<u>Issue:</u> Article 24 – Insurance (New Health Insurance Plan)

The most salient disagreement between the parties is the City's position with regard to the medical insurance plan. The current plan calls for the City to pay the premiums for the health insurance plan. The City wishes to change the plan to a situation where the employees pay a portion of the premiums. It must be noted that the City is maintaining an excellent health insurance package and the benefits also include vision and dental insurance. Therefore the term "plan redesign" in this case means the way the insurance is funded.

The City presented evidence with regard to the cost of medical insurance and the projected cost of the current plan. The City contends that it cannot afford to continue the current plan given its budgetary problems. The City also contends that the plan it is offering is a standard plan throughout both Ohio and the nation. The main feature of the plan is a ninety – ten (90% - 10%) cost share. In addition, there are co-pays and deductibles with the plan. (Specifics are included with the Employer's proposal Appendix A). The Union strongly objected to the plan. The Union claimed the City's position was Draconian. The Union stated that the imposition of co-pays, deductibles, and changes in the retiree health benefit amounted to a "triple whammy" and was too much for the employees to pay. The Union stated that the increased cost of the medical insurance might actually be greater than the employee's wage increase and the employees might see a fall in take home pay.

The Fact Finder understands the Union's position. However, only in unusual circumstances would an employee's cost reach the deductible limit. In the more usual situation, the employee would not face a maximum out-of-pocket expense. In addition, the City contends that plans with co-pays and deductibles have become standard. The Union disputes this fact, but the plan offered by the City is the standard SuperMed Plus plan in force in many jurisdictions throughout Northeast Ohio. Moreover, the City's salaried workers and a number of city bargaining units have already agreed to the change.

The Union also argued that the City had agreed to form a health benefits committee with its employees during the last round of negotiations and that such a committee could be helpful in designing a plan that would limit both the employer's and the employee's cost. The Union argued that the City did not follow the contract and set up the committee, and therefore should not be able to change the plan without consulting the employees. The Fact Finder disagrees with this analysis. The City's actions do not negate its right to put forth proposals during negotiations.

During all of the discussions on this matter, the Union continually stressed that the medical cost faced by the employees was uncapped and uncertain. The Union argued that this was unfair. That is, the employees are responsible for ten (10%) percent of the plan's cost, but with medical costs rising, there is no way to measure what ten (10%) percent means. The Union demanded a cap on costs. The City argued that its goal was to contain costs and not to harm the employees. In return for the "pain sharing" provisions related to the retiree health plan, the City agreed to cap the employees contribution for each year of the proposed contract. The caps would be a maximum of fifty ($50.00) dollars per month from July 1, 2006 to December 31, 2006; a maximum of seventy-five ($75.00) per month from January 1, 2007 to June 30, 2007 and ninety ($90.00) dollars per month from July 1, 2007 to December 31, 2007. During the next round of negotiations the question of caps can be discussed again. As an aside, it was agreed that the City's cost of the HMO plan would not be higher than the cost of the PPO.

The Fact Finder is mindful of the Union's concerns. However, the health care cost crisis that plagues the entire country is also present in Parma. Given the condition of the City's finances coupled with the rising premium levels, the City is forced to make some changes in the health plan. The Union has been able to insert reasonable protections for its members into the contract. The Fact Finder believes that the City is in a position where it must make some changes in its health plan in an attempt to control costs. Unfortunately, that will have some effect on its employees, but that is a fact of life throughout the United States. Rising health care costs affect everyone.

Finding of Fact: The City must make some attempt to control its health care costs for both retirees and current employees.

Suggested Language: Description of SuperMed Plus plan included in the contract as Appendix A.

Article 24.05(B) In the event that more than ten (10) employees between the patrol and supervisor's bargaining units retire before February 1, 2008, the monthly insurance premium reimbursement pursuant to sub-paragraph (a) above, shall be reduced to an amount that results in the cost of the additional retirees is expense neutral to the employer.

Article 24.05(D) The Employer agrees that it will make no proposals to modify the above retirement reimbursement plan during the re-negotiation of this Agreement for the next successor contract.

Note: The parties did come agreement on a number of issues during negotiations including but not limited to the insertion of shift bidding and drug testing language into the contract, changes various stipend levels enumerated in Article 26, an increase in the Uniform Allowance, and numerous typographical and numbering changes throughout the contract. All of these changes are included by reference into this report.

Signed this 20th day of July 2006, at Munroe Falls, Ohio.

Dennis M. Byrne

Dennis M. Byrne, Fact Finder