

FACTFINDING REPORT

STATE EMPLOYMENT  
RELATIONS BOARD

STATE OF OHIO

2007 AUG 29 A 11: 38

STATE EMPLOYMENT RELATIONS BOARD

August 27, 2007

In the Matter of:

City of Middleburg Heights )

and )

Ohio Patrolmen's Benevolent Association )

Case No. 06-MED-10-1264  
Patrolmen

APPEARANCES

For the City:

Tom Colaluca, Attorney  
Eric M. Allain, Attorney  
Timothy Pope, Director of Finance  
Jeff Minch, Assistant to the Mayor

For the Union:

S. Randall Weltman, OPBA Attorney  
Duane Funk, Director  
John Valukievic, Negotiating Committee  
Brent Lavinder, Negotiating Committee  
Eric Burgett, Negotiating Committee

Factfinder:

Nels E. Nelson

## BACKGROUND

The instant case involves the City of Middleburg Heights and the Ohio Patrolmen's Benevolent Association. The city is a prosperous suburb located in the southwestern part of Cuyahoga County and has a population of 15,000. The Ohio Patrolmen's Benevolent Association represents the 27 patrolmen employed by the city. The parties have a history of 25 years of bargaining.

In the fall of 2006, the parties began negotiations for a successor agreement to the one due to expire on December 31, 2006. The parties reached impasse and the Factfinder was appointed on May 11, 2007. The factfinding hearing was held on July 30, 2007. When the Factfinder's efforts to resolve the dispute through mediation were unsuccessful, this report was prepared.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) 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 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 issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

## ISSUES

The parties submitted ten issues to the Factfinder. For each issue the Factfinder will state the positions of the parties, summarize the arguments and evidence they offered in support of their positions, present a discussion of the issue, and provide his recommendation for the resolution of the each issue, including suggested contract language.

1) Article XII - Holidays, Section 12.03 - The current contract provides for straight time for employees who work on any of the 12 named holidays. The union proposes that employees who work Memorial Day, the Fourth of July, Labor Day, and Christmas be paid time and one-half plus holiday pay. The city opposes the union's demand.

Union Position – The union argues that a comparison to other jurisdictions supports its position. It points out that in the six contiguous cities only one pays straight time for all holidays while two pay time and one-half for all holidays worked and in the remaining cities patrolmen receive time and one-half for three to six holidays.<sup>1</sup> The union notes that ten prosperous cities in Cuyahoga County all pay time and one-half for at least three holidays while three departments pay premium time for all holidays worked.<sup>2</sup>

City Position – The city opposes the union's demand. It contends that other city units do not get premium pay for working holidays and claims that the union bears a heavy burden to justify a deviation from the pattern. The city adds that granting the

---

<sup>1</sup> The contiguous cities are Berea, Brook Park, North Royalton, Parma, Parma Heights, and Strongsville.

<sup>2</sup> The prosperous cities identified by the union are Beachwood, Brecksville, Highland Heights, Independence, Lyndhurst, Mayfield Heights, Rocky River, Shaker Heights, Solon, and Westlake.

union's proposal would force the city to face sweeping changes throughout the remaining bargaining units.

The city claims that the union has placed primary focus on wages at the expense of items like holidays. It states that the wage of its patrolmen exceeds the average wage for the region by a substantial amount.<sup>3</sup> The city asserts that holiday pay must remain unchanged if the union wishes to maintain its rank with respect to wages.

Analysis – The current contract suggests that in past bargaining the union has focused on the base wage. However, in the present round of bargaining the union has demanded improvements in a significant number of other areas.

The Factfinder cannot recommend all of the union's demands. In order to do so, he would have to recommend a substandard wage increase or an unreasonably costly package. Since the Factfinder does not intend to do either, he must decide which of the union's demands he can recommend. Since no other city employees enjoy the benefit the union is seeking, he will not recommend the union's demand for time and one-half for working on four holidays.

Recommendation - The Factfinder recommends no change in the current contract.

2) Article XIV - Sick Leave, Section 14.12 - The current contract allows patrolmen to cash out one-third of their unused sick leave at retirement subject to the following maximums: 85 days for patrolmen with 10 to 15 years of service, 95 days for patrolmen with 15 to 20 years of service, 105 days for patrolmen with 20 to 25 years of

---

<sup>3</sup> The city defines the region as consisting of Berea, Brooklyn, Brook Park, Parma, Parma Heights, Rocky River, and Strongsville.

service, and 115 days for patrolmen with 25 or more years of service. The union proposes a 10-day increase in the maximum for each of the service categories. The city opposes the union's demand.

Union Position – The union argues that its demand ought to be granted. It claims that its demand is modest and is justified by a comparison to other jurisdictions. It reports that for the contiguous and prosperous cities patrolmen can cash out between 25% and 100% of their unused sick days subject to maximums that range from 45 days to an unlimited number of days. The union adds that increasing the sick leave cash out is a one-time benefit that will encourage patrolmen to save sick leave and, thereby, reduce overtime.

City Position – The city opposes the union's demand. It maintains that fairness supports its position because its other bargaining units have the same sick leave provision as the patrolmen. The city reports that the union's proposal will increase the maximum cash out for a 25-year patrolman from \$26,808 to \$30,160. It asserts that uncertainty regarding the cost of the union's proposal makes it impossible to responsibly budget for the costs.

Analysis - The Factfinder cannot recommend an increase in the maximum of days that can be cashed out at retirement. While it is clear that some cities offer more generous arrangements than Middleburg Heights, others are inferior. Furthermore, since all city employees are likely to receive the same arrangement regarding sick leave at retirement, the cost to the city of any change in the current provision must be carefully considered.

Recommendation - The Factfinder recommends no change in the current contract.

3) Article XV - Personal Leave, Section 15.03 - The current contract provides for two personal days. The union proposes increasing the number of personal days to three. The city opposes the union's demand.

Union Position – The union argues that its demand is justified. It points out that in the contiguous departments the average number of personal days and holidays is 14.5 compared to 13 in the city. The union claims that its increase will not cost the city any money because personal leave is not approved when it will result in overtime.

City Position – The city opposes the union's demand. It points out that the other bargaining units in the city have two personal days and that patrolmen in Brooklyn, Parma, Parma Heights, and Rocky River the same allotment of personal days. The city further maintains that personal leave has a cost because the time must be taken before the end of the year so that its use may entail overtime.

Analysis - The Factfinder cannot recommend increasing personal leave. The time that the patrolmen currently receive is comparable to nearby departments. Furthermore, in the union's prosperous cities, patrolmen receive an average of 10 holidays and 1.5 personal days compared to 11 holidays and 2 personal days in Middleburg Heights.

Recommendation - The Factfinder recommends no change in the current contract.

4) Article XVIII - Overtime and Court Time, Section 18.02 - The

current contract requires the city to pay patrolmen who are called in to work or court for less than two hours not less than three hours of pay. The union proposes that the three-hour minimum be paid at time and one-half. The city opposes the union's demand.

Union Position – The union argues that its proposal ought to be recommended. It reports that four of the contiguous cities have a minimum of three hours at time and one-half for appearing in court and that many of the departments in the prosperous cities offer a minimum of four hours at time and one half. The union observes that court time is applicable solely to police.

City Position – The city opposes the union's demand. It states that since most cases do not involve less than two hours, patrolmen actually receive a wage that is much higher than straight time and most of the time, higher than the overtime rate.

Analysis - The Factfinder recommends that the union's demand be adopted. While patrolmen who are called in to court frequently get overtime because it involves more than 40 hours of work in a week, those who would not otherwise get overtime are entitled to extra compensation for having their regular time off interrupted. This recommendation is supported by the comparable departments offered by both sides.

Recommendation - The Factfinder recommends the following contract language:

Whenever approved by the Chief, employees called in to work or appearing in court on behalf of the Employer for a time period of less than two (2) hours, when the employee is not on duty, shall be paid not less than three (3) hours pay at the overtime rate.

5) Article XIX - Premium and Other Pays, Section 19.01 - The current

contract provides for the following additional pays:

Training Certificate in Law Enforcement	\$350
Associate Degree in Law Enforcement	\$600
Bachelor's Degree in approved field	\$850
Graduate Degree in approved field	\$1,100

The union wishes to increase each premium by \$100 and to roll it into the base on January 1, 2007. The city opposes both of the union's demands.

Union Position – The union argues that its demand is justified. It indicates that a city ordinance provides city hall employees with a 3% bonus for a BA and a 4% bonus for an MA, which is better than its flat rate. The union notes that the city agreed to roll the firefighters' paramedic pay into their base.

City Position – The city rejects the union's demands. It points out that it proposed that patrolmen get what the city hall employees get by ordinance but the union rejected its offer. The city complains that rolling the education allowances into the base is a hidden wage increase and creates administrative problems because it would create differences in base rates. It asserts that the present educational bonus provides sufficient incentive for patrolmen to further their education.

Analysis - The Factfinder sees no reason to increase the educational allowances. Since all new hires must be college graduates, the rationale for premiums for various levels of education has been reduced. Increases in compensation should occur through increases in the base pay.

Recommendation - The Factfinder recommends no change in the current contract.

6) Article XX - Uniform Allowance, Section 20.02 - The current contract provides for a uniform allowance of \$900. The union proposes increasing it by \$50 in 2007, 2008, and 2009. The city opposes any increase in the uniform allowance.

Union Position – The union argues that its demand ought to be recommended. It reports that the city’s uniform allowance is the lowest among the contiguous cities and below the average for the prosperous cities and Cuyahoga County. The union adds that the increase in the price of uniforms justifies its demand. The union notes that Factfinder Charles Adamson recommended that firefighters in the city get a \$150 increase in their uniform allowance effective January 1, 2007.

City Position – The city opposes the union’s demand. It states its uniform allowance is competitive with the \$1006 average uniform allowance for the region. The city acknowledges that its allowance is below the average but notes that it is within \$100 of the amounts in Berea, Brooklyn, and Strongsville. It stresses, however, that its total compensation is \$2353 above the average for the region.

The city contends that the current uniform allowance provides sufficient money to compensate patrolmen for the normal wear and tear on uniforms. It complains that the union presented no evidence that the cost of uniform repair or replacement rose by \$150 or by any amount. The city characterizes the union’s demand as simply an attempt to increase patrolmen’s total compensation. It cites City of Lorain and Firefighters, SERB Case No. 05-MED-05-0657, where Factfinder Dennis Minni rejected an increase in longevity. The city notes that his position was based on an absence of evidence to support the union’s demand.

Analysis - The Factfinder does not dispute the city's claim that a uniform allowance sometimes represents nothing more than an attempt to increase compensation. This fact, however, does not mean that an increase in the uniform allowance should not be recommended. Nearly all cities provide more or less regular increases in uniform allowances even where there may be limited justification based on changes in the cost of uniform maintenance and replacement.

In the instant case, the Factfinder believes that increasing the uniform allowance to \$1000 effective January 1, 2007, is appropriate. This will move the city closer to the allowances in other departments. It also approximates the increases being granted in other negotiations.

Recommendation - The Factfinder recommends the following contract language:

All non-probationary employees shall receive an annual uniform allowance in the amount of one thousand (\$1000) dollars. This amount shall be divided in half with the first payment being made in the last regular pay period in May, or at the City discretion, on June 1<sup>st</sup>, and the second payment the first pay period in December of each year.

7) Article XXII - Salary Schedule, Section 22.04 - The current contract establishes wages that range from \$21.61 per hour at step one to \$29.14 at step four. The union demands that wages be increased 3.5% effective January 1 of 2007, 2008, and 2009. The city offers a 3% wage increase effective with the ratification of the agreement and 3% effective January 1, 2008.

Union Position - The union argues that its wage demand ought to be recommended. It states that Middleburg Heights has gone from a struggling suburb to

one of the most viable cities in the area. The union acknowledges that the city is near the top of the contiguous cities in compensation but claims that Berea, Parma, and Strongsville have “issues.” It emphasizes that the city should offer wages and benefits equal to the prosperous suburbs in Cuyahoga County.

The union contends that its position is supported by the wage increases agreed to by other cities. The union points out that wage increases in the contiguous cities averages 3.22% in 2007, 3.50% in 2008, and 3.25% in 2009; 3.50%, 3.10%, and 3.00% in the westside cities; 3.47%, 3.54%, and 3.50% in the prosperous cities; and 3.46%, 3.32%, and 3.33% in Cuyahoga County.<sup>4</sup>

The union cites City of Lyndhurst and Ohio Patrolmen’s Benevolent Association, Case No. 00-MED-10-1190, March 30, 2001. It points out that in that case the city proposed 3% wage increases for 2001, 2002, and 2003, arguing that it would allow Lyndhurst to stay among the highest paying cities in the county. The union notes that Factfinder Virginia Wallace Curry recommended the 4% wage increases received by nearby departments and statewide because she saw no reason why the union’s previous wage gains should be eroded.

The union also offered City of Mayfield Heights and Ohio Patrolmen’s Benevolent Association, Case No. 06-MED-05-0647, March 28, 2007. It reports that in that case the city offered 3% wage increases for 2006, 2007, and 2008 while the union demanded increases of 4%, 3.75%, and 3.50%. The union observes that this Factfinder found that Mayfield Heights was near the top of the array of wages in the area and that

---

<sup>4</sup> The westside cities consist of Bay Village, Berea, Brecksville, Broadview Heights, Brooklyn, Brook Park, Fairview Park, Independence, Lakewood, North Olmsted, North Royalton, Olmsted Falls, Parma, Parma Heights, Rocky River, Seven Hills, Strongsville, and Westlake. The Cuyahoga County cites consist of 35 cities and specifically exclude Cleveland and East Cleveland.

the city did not show that it should not remain at the top or near the top of the wage hierarchy and recommended increases of 3.5% in 2006, 2007, and 2008.

The union maintains that its position is also supported by the State Employment Relations Board's 2006 Annual Wage Settlement Report and changes in the consumer price index. It points out that SERB's annual wage report shows that wages for police increased by 3.23% in Ohio in 2006. The union notes that the Public Safety Labor News reported that the CPI-W, which measures changes in the cost of living for wage and salary earners, rose 3.2% from November 2005 to November 2006 for the Midwest.

The union stresses that the city is in very sound financial shape. It observes that the city's Comprehensive Accounting Financial Report dated December 31, 2006, indicates that medical and health related businesses located in the city have shown significant growth; that the city's net assets have risen; that the city has large ending fund balances; and that an income tax increase effective January 1, 2007, is expected to bring in an additional \$1.8 million dollars.

City Position – The city argues that its proposal ought to be adopted. It indicates that in Mayfield Heights the Factfinder in the instant case stated that there exists a hierarchy of wages where some cities pay high wages and others pay lower wages. The city notes that Middleburg Heights sits atop the hierarchy of wages in the region and that its proposed 3% wage increases for 2007 and 2008 maintains the hierarchy.

The city contends that external comparisons show that the patrolmen's total compensation is above the average for the region. It points out that the patrolmen's total compensation is \$62,262 compared to \$59,907 in the region. The city notes that this is

3.99% higher than the region. The city further observes that its proposed 3% wage increases result in patrolmen maintaining an advantage of \$2261 or 3.7%.

The city observes that its base wage also exceeds the region's average. It reports that in 2006 patrolmen had the highest base wage, \$2135 or 3.65% above the average. The city states that with its offer, it will remain \$2044 or 3.39% above the average in 2007 and \$2329 or 3.76% above in 2008.

The city indicates the wage for patrolmen exceeds wages in the Cleveland-Elyria-Mentor metropolitan area. It states that the Department of Labor reported a mean wage of \$39,640 for all occupations and \$50,370 for patrolmen compared to \$60,611 for patrolmen in Middleburg Heights. The city adds that the average wage of \$58,476 for patrolmen in the region also exceeds the DOL's average for all occupations in northeast Ohio.

The city claims that external comparisons indicate a downward trend in settlements in northeast Ohio. It points out that in the region settlements declined from 3.46% in 2004 to 3.26% in 2007 and 3.25% in 2008. The city notes that the figures for the region include Strongsville and Parma Heights where there were large wage increases because they were behind other cities. It emphasizes that excluding those increases, the wage increases in the region were 3.15% in 2007 and 3.00% in 2008.

The city also relies on the SERB's annual wage report. It observes that it shows that patrolmen in Ohio received wage increases of 3.23% in 2006. The city reports that despite this, Brook Park and Rocky River settled on 3% wage increases for 2007.

The city argues that recent settlements are less than the 2.99% SERB reported for all occupations in the Cleveland area for 2006. It reports that on May 31, 2007, the

Richmond Heights teachers' union accepted a 2% pay raise, which was less than the 2.62% reported by SERB for teachers statewide in 2006. The city notes that in City of Bay Village and International Association of Fire Fighters, Local 1144; Case No. 06-MED-10-1148; June 20, 2007, Conciliator James Mancini awarded wage increases of 2.5% in 2007 and 2008 and 2.75% in 2009, which is less than the 3.0% increases for firefighters in Ohio.

The city maintains that its proposal almost doubles the increase in the cost of living. It points out that the Bureau of Labor Statistics reported that CPI-U, which measures the cost of living for urban consumers, increased 1.7% in 2006 in the Cleveland-Akron area. The city claims that the Factfinder should choose its wage proposal because it exceeds the rise in the CPI by an amount less than the union's demand.

The city contends that internal comparisons are a very important consideration. It states that internal pattern bargaining "has long been recognized to ensure fairness through economic parity." (City Position Statement, page 10) The city indicates that the concept also protects both parties from whipsawing. It notes that Factfinder Harry Graham in FOP v. State of Ohio, Ohio Highway Patrol, BU 1 (1994), held that the party who wishes to deviate from an existing pattern bears a "very, very heavy burden."

The city claims that it established a pattern by offering 3% wage increases to each bargaining unit. It reports that in IAFF and City of Middleburg Heights, Case No. 06-MED-09-1090, July 23, 2007, Factfinder Charles Adamson recommended the city's 3% wage offer, stating that a consistent offer to all bargaining units could not be overlooked. The city asserts that "the City's maintenance of pattern bargaining creates a burden too

great for the Union to overcome and, as such, the City's proposal must be granted." (City Position Statement, page 11)

Analysis – One of the key criteria for the Factfinder in making wage recommendations is comparables. They are generally understood to include both nearby and similar communities. The nearby communities are frequently defined as the contiguous jurisdictions. Similar communities are usually based on population or wealth.

In the instant case, the parties supplied extensive comparative data. The city preferred to focus on the region, which it defined as the contiguous cities plus Rocky River. The union provided wage data for contiguous cities, prosperous cities, westside cities, and Cuyahoga County excluding Cleveland and East Cleveland.

The data shows that patrolmen in Middleburg Heights receive relatively high wages. They have the highest wages among the cities in the region, rank third of 19 westside cities, and exceed the average wage for Cuyahoga County by \$2044. It should be noted, however, that in total compensation Middleburg Heights exceeds the county average by only \$625.

The union wishes to focus on the ten prosperous cities in Cuyahoga County. Each of the cities are among the highest in the county in median family income, per capita income, and median household income. Middleburg Heights falls in the same range as the ten prosperous cities for each of the measures of wealth used by the union.

Not surprisingly, the city does not compare as favorably with the prosperous cities. Its base wage is \$690 below the average for the other ten cities and total compensation in the city is \$1375 below the other prosperous cities.

The data supplied by the parties reflects the hierarchy of wages that exists for patrolmen. It is a function of many factors including bargaining history. The array of wages has developed over many years and it tends to change slowly.

The existence of this hierarchy of wages makes wage increases in other cities a useful guide in making wage recommendations. If a Factfinder proposes a wage increase similar to those negotiated in other cities, he leaves the existing wage hierarchy intact.

This is not to say that wages in a particular city should never change relative to wages elsewhere. In some instances, a city experiences difficulties and relative wages inevitably decline. In other cases, a city's resources rise and consequently, the wages of its employees rise relative to employees in other locations.

The city and the union both provided data on wage increases in other cities. The data can be summarized as follows:

<u>Comparison Group*</u>	Wage Increases**	
	2007	2008
Contiguous	3.22%(5)	3.50%(3)
Region	3.26%(6)	3.25%(4)
Westside	3.50%(13)	3.10%(9)
Prosperous	3.47%(8)	3.54%(6)
County	3.46%(28)	3.32%(19)

\* The contiguous cities are Berea, Brook Park, North Royalton, Parma, Parma Heights, and Strongsville. The region includes Berea, Brooklyn, Brook Park, Parma, Parma Heights, Rocky River, and Strongsville. The prosperous cities include Beachwood, Brecksville, Highland Heights, Independence, Lyndhurst, Mayfield Heights, Rocky River, Shaker Heights, Solon, and Westlake. The westside cities consist of Bay Village, Berea, Brecksville, Broadview Heights, Brooklyn, Brook Park, Fairview Park, Independence, Lakewood, North Olmsted, North Royalton, Olmsted Falls, Parma, Parma Heights, Rocky River, Seven Hills, Strongsville, and Westlake. The Cuyahoga County cities consist of 35 cities and specifically exclude Cleveland and East Cleveland.

\*\* The figures in parentheses indicate the number of settlements included in the average wage increase.

SERB also provides data on negotiated wage changes. Unfortunately, the latest available data shows wage increases in 2006 and is highly aggregated, showing wage increases statewide and by region, type of employer, and occupation. In the Cleveland region, wages for all occupations rose 2.99%. The most relevant figure, however, is probably the 3.23% increase for police officers in Ohio.

Based on the data submitted by both parties, the Factfinder recommends that wages be increased by 3.25% on January 1 of 2007 and 2008. The city offered no convincing reason why it should grant a smaller increase than other comparable cities or why the increase for 2007 should not be retroactive to January 1. At the same time, granting the union's demand for 3.5% wage increases fails to reflect the other improvements in the contract and the fact that patrolmen still enjoy good health care insurance at minimal cost. It would also ignore the city's concerns about the future direction of the national and local economies.

The Factfinder realizes that his recommended wage increases are more than those recommended by Factfinder Adamson in the dispute between the city and the firefighters. In that dispute, the Factfinder relied on the 2.99% average wage increase in Ohio in 2006, as reported by SERB, and the fact that the city had offered other city bargaining units the same 3% it was offering to the firefighters. In the instant case, the data presented clearly justifies the recommended 3.25% wage increases in 2007 and 2008.

Recommendation - The Factfinder recommends the following contract

language:

22.01. Wages shall be increased 3.25% effective January 1, 2007, and January 1, 2008.

8) Article XXIV- Insurance , Section 24.01 - The current contract requires the city to pay the full premium for individual or family coverage. The plan pays 80% of the in-network charges and 70% of the out-of-network charges and has out-of-pocket maximums of \$800 in-network and \$1200 out-of-network. It has a \$15 co-pay for the first 15 doctor's office visits. The prescription plan has co-pays of \$5 for generic drugs, \$15 for brand name drugs where no generic drug is available, and \$20 for brand name drugs where a generic is available.

The city demands four changes in the health insurance program. First, it wishes to establish a \$50 co-pay for emergency room visits with the proviso that the co-pay is waived if the employee is admitted to the hospital. Second, the city seeks to increase the out-of-pocket maximums to \$1000 and \$1500. Third, it proposes raising the co-pay for doctors' office visits to \$20 but with no limit on the number of visits. Fourth, the city demands prescription co-pays of \$5 for generic drugs, \$15 for formulary drugs, and \$50 for brand name drugs.

The union offers three changes in the plan. First, it agrees to a \$50 co-pay for emergency room visits but proposes that the co-pay be waived if the employee is sent to the emergency room by a doctor. Second, the union is amenable to increasing the out-of-pocket maximums to \$900 and \$1350. Third, it assents to an increase in the co-pay for brand name drugs to \$25.

City Position – The city argues that its demand should be accepted. It claims that it is asking the union for a slight modification in the health insurance plan based on usage. The city asserts that its proposal falls far short of what Ohio public and private sector employees are currently paying for health insurance.

The city contends that the changes it proposes are necessary to deal with rising health care costs. It points out that page 16 of SERB's 2006 Report on Health Insurance Cost in Ohio's Public Sector indicates that in 2006 health insurance costs rose 6.88% in Ohio and 7.7% nationally. The city notes that its monthly premiums rose from \$756 to \$803, or 6.3%, from 2006 to 2007. It emphasizes that despite its higher costs it is not requesting employees to pay part of the premiums.

The city maintains that a comparison of its proposal and the union's proposal supports its position. It claims that increasing the co-pay for doctors' office visits by \$5 is offset by the elimination on the limit on doctors' office visits. The city complains that the union's proposal to eliminate the \$50 co-pay on emergency room visits when the person is sent there by a doctor would make the co-pay meaningless because doctors routinely refer patients to emergency rooms after regular hours. It states that the increased out-of-pocket maximums fall only on employees who use the plan and drive up the costs. The city claims that the \$50 co-pay on brand name drugs provides an incentive to use generic drugs and claims that SERB's report on health insurance indicates that the average brand name co-pay for city employees in Ohio is \$57.67.<sup>5</sup>

The city rejects the figures on health insurance offered by the union. It states that it is not clear what the benefits are in the cities cited by the union. The city suggests that such data should not be used by the Factfinder.

The city asserts that "septic consequences" may result if health care provisions linger unfettered. It reports that General Motors and the United Auto Workers recently were forced to cut health care benefits by \$1 billion dollars. The city asserts that it is

---

<sup>5</sup> The figure referred to by the city is the average co-pay for mail-order prescriptions. The average co-pay for retail prescriptions, which is the issue here, is \$30.98.

trying to avoid future problems while still offering a reasonable and affordable health care plan.

The city stresses that its health insurance proposal was accepted by the firefighters and offered to other city employees. It cites IAFF and City of Middleburg Heights, Case No. 06-MED-09-1090, July 23, 2007, where Factfinder Charles Adamson stated that an offer to all an employer's bargaining units must be "afforded great weight and significance." The city also relies on FOP v. State of Ohio, Ohio Highway Patrol, BU 1 (1994), where it claims that Factfinder Graham held that "a union seeking to deviate from an existing pattern bears a very, very heavy burden." (City Position Statement, page 19)

Union Position – The union opposes the city's demand. It indicates that in 2006 the city's health insurance expenses were flat. The union observes that on page 9 of the city's Comprehensive Annual Financial Statement, dated December 31, 2006, it states that health care costs in the city remained constant in 2006. It further claims that data supplied by the city shows that between 2005 and 2006 both claims and administrative fees declined.

The union contends that data for comparable cities does not support the city's demand. It offers the following information regarding neighboring cities:

Parma Heights - The co-pays are \$7.50 for generic drugs, \$12.50 for formulary drugs, and \$15.00 for brand name drugs. The co-pay for doctors' office visits is \$10. The out-of-pocket maximum is \$400 for individuals and \$800 for families.

Brooklyn - The co-pays are \$5 for generic drugs, \$10 for formulary drugs, and \$25 for brand name drugs. The entire amount of the premiums for health insurance is paid by the city.

Strongsville - The co-pay is \$10 for generic drugs, \$15 for formulary drugs, and \$30 for brand name drugs. Employees pay \$20 per month for health insurance.

Berea - The patrolmen pay \$5 for generic drugs and \$10 for name brand drugs. Dispatchers have a \$400 out-of-pocket maximum for family coverage for the Emerald Health Plan. The city pays the full premiums for both patrolmen and dispatchers.

Analysis – Health insurance is one of the most difficult issues in both private and public sector bargaining. Most employers are facing substantial increases in the cost of providing health insurance to their employees. Many employers have responded by requiring employees to pay a share of the premiums or to share in the costs of health care through co-pays and deductibles.

In the instant case, the union recognizes the problem faced by the city and accepts the need to pay more for its health care than it has in the past. The disagreement between the city and the union is the extent of the changes. The union wishes less restriction on the use of emergency rooms, a smaller co-pay for doctors' office visits and out-of-pocket maximums, and a significantly lower co-pay for brand name drugs.

The Factfinder cannot grant the union's request that the co-pay for emergency room visits be waived when a patient goes there at the direction of a doctor. First, the fact is that many of the people who wind up in emergency rooms are told to go there by their doctor when they call after normal office hours. Thus, the exception to the co-pay might make the co-pay meaningless. Second, the Factfinder is not at all certain that the provision sought by the union could be administered.

The Factfinder believes that the increase in the out-of-pocket maximums sought by the city ought to be adopted. It is consistent with the insurance plans offered by other public employers. Furthermore, while the out-of-pocket maximums might appear high, it

has to be viewed in the context of the high wages received by members of the bargaining unit.

The impact of the city's proposal to increase the co-pay for doctors' office visits and the elimination of the limit on the number of visits is not entirely clear. At the hearing, the parties appeared to agree that some members of the bargaining unit would be better off with the city's proposal while others would face greater costs. The Factfinder believes that the impact on the total bargaining unit is apt to be small and recommends that the city's proposal be adopted.

The Factfinder cannot recommend the \$50 co-pay for brand name drugs sought by the city. The proposed rate increases the current rate by two and one-half times and is likely to have major consequences for at least some members of the bargaining unit who are forced to depend on certain brand name drugs. Given the fact that the city's claims and premiums/administrative costs decreased between 2005 and 2006, such a large increase in the brand name co-pay cannot be justified.

The Factfinder recommends that the brand name co-pay be increased to \$30. This is approximately equal to the brand name co-pay of \$30.98 for city employees, as reported in the SERB report on health care costs. It is also large enough to encourage members of the bargaining unit and their doctors to rely on generic or formulary drugs rather than brand name drugs whenever possible.

Recommendation - The Factfinder recommends the following contract language:

24.01. The Employer shall continue to pay the full premiums of either the individual or family plan as appropriate for the insurance coverage presently in effect or contribute a similar amount to a Health Maintenance Plan, which shall be Kaiser Alternate B plan, at the employee's option and which alternate

health maintenance care plan (Kaiser) shall expire on 12-31-06, with City insurance coverage being subject to the co-pays and provisions as stated below:

(a) Current contract language.

(b) the employer and the employee shall pay eighty percent (80%) and twenty percent (20%), respectively, of the first five thousand dollars (\$5000) in-network and 70% and 30%, respectively, out-of-network; and

(c) Current contract language.

(d) such plan shall continue to include the existing prescription drug rider, however, the prescription coverage co-pay shall be five dollars (\$5.00) for generic drug prescription; fifteen dollars (\$15.00) for brand name drugs which are dispensed where no generic is available and thirty dollars (\$30.00) for name brand prescriptions. Pharmacy filled prescriptions shall have a maximum of thirty (30) days. The city shall maintain its mail order service for a ninety (90) day supply for maintenance drug prescriptions. Employees also have the option of receiving maintenance drug prescriptions at Walgreen pharmacies so long as the City maintains such maintenance prescription plan with Walgreen. The mail order plan or Walgreen option for maintenance drug prescriptions is mandatory; and

(e) Current contract language.

(f) Employees shall be subject to a fifty dollar (\$50.00) co-pay for all visits to a hospital emergency room except that the co-pay will be waived if the employee or his dependent are admitted to the hospital.

9) Article 31 - Duration, Section 31.01 - The current contract had a term of two years. The city proposes a two-year agreement. The union seeks a three-year contract.

City Position – The city argues that it needs a two-year agreement. It claims that a two-year contract will allow it to manage its budget effectively and plan for fiscal

matters. The city claims that given the instability in the economic forecast, a shorter contract term will allow it to reassess its situation, creating a win-win situation.

Union Position – The union opposes the city’s demand. It indicates that the majority of contracts are for three years and claims that there is no reason for a shorter term in Middleburg Heights.

Analysis - While the Factfinder recognizes that three-year agreements are the norm and that shorter term agreements tend to turn bargaining into a never-ending process, he recommends a two-year agreement. The city expressed concerns about future developments and the associated financial uncertainties. Although the concerns appear to be unfounded, the Factfinder must acknowledge the reluctance of the city to agree to a three-year contract.

Recommendation - The Factfinder recommends the following contract language:

31.01. The Agreement shall become effective at 12:01 a.m. on January 1, 2007, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2008.

10) Article XXXVI - Miscellaneous, Section 36.06 - The current contract requires the city to pay \$75 to employees who maintain single or family memberships at the recreation center. The union demands that the city provide free individual membership and pay one-half of the fee for family membership. The city proposes retaining the current contract provision.

Union Position – The union argues that its proposal ought to be adopted. It indicates that its proposal will encourage patrolmen to become members of the rec center

and that this will provide additional security for city residents while at the rec center.

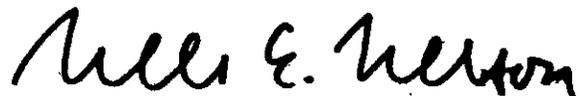
The union claims that its proposal has no cost to the city.

City Position – The city opposes the union’s demand. It points out that the present provision gives patrolmen who reside in the city a lower membership charge than residents who are not employees. The city notes that the disparity continues when examining the rates for patrolmen who do not reside in the city.

The city notes that the union provided no evidence to justify its demand. It observes that its proposal is identical to that offered to the firefighters. The city insists that there is no reason to deviate from the established pattern.

Analysis - The Factfinder must deny the union’s demand. He does not believe that the city should further subsidize rec center membership for patrolmen and their families. Under the present contract provision, patrolmen receive a subsidy for joining the rec center. A further subsidy might be viewed as unfair vis-à-vis citizens who are not employees of the city.

Recommendation - The Factfinder recommends no change in the current contract.



---

Nels E. Nelson  
Factfinder

August 27, 2007  
Russell Township  
Geauga County, Ohio