



## **SUBMISSION**

The Parties in the present negotiation engage in multi-unit bargaining pursuant to ORC 4117, and have had an ongoing collective bargaining relationship culminating in a one year Agreement that became effective on January 1, 2009 and obtained through December 31, 2009. By agreement of the Parties, the undersigned Neutral was retained as Factfinder in successor negotiations under the previous SERB Case Numbers. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on several occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested that the Fact-finder convene an evidentiary hearing on May 28, 2010. However, due to the unavailability of the Union's Financial Analyst, the hearing was adjourned and reconvened on July 14, 2010. Accordingly, an evidentiary hearing was conducted on June 14, 2010 at which the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed as of the date of hearing.

## **ISSUES AT IMPASSE**

The Parties identified and presented the following issues as unresolved:

- |                      |   |                 |
|----------------------|---|-----------------|
| <b>1. Article 27</b> | - | <b>Wages</b>    |
| <b>2. Article 38</b> | - | <b>Duration</b> |

## **TENTATIVE AGREEMENTS OF THE PARTIES**

Prior to Factfinding, the Parties reached tentative agreement on the following issues:

- |                   |   |                                       |
|-------------------|---|---------------------------------------|
| <b>Article 17</b> | - | <b>Sick Leave - §§17.1 &amp; 17.8</b> |
| <b>Article 24</b> | - | <b>Vacations - §24.4</b>              |
| <b>Article 29</b> | - | <b>Holidays - §29.1</b>               |

## **STATUTORY CONSIDERATIONS**

In weighing the positions presented by the Parties, the Fact-finder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(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;
- 4117-9-05(K)(3)** The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## **BACKGROUND AND STATUTORY CONSIDERATIONS**

The City of Broadview Heights (City or Employer) employs approximately 25 sworn Patrol Officers (Patrol Unit) and 6 sworn Sergeants (Sergeants' Unit) represented in multi-unit bargaining by Fraternal Order of Police Parma Lodge Number 15 (FOP or Lodge 15). The Parties relate under terms of a collective Agreement (Agreement) that took effect on January 1, 2009 and obtained through December 31, 2009. That Agreement, of one year's duration, resulted from the Parties' acceptance of a Factfinding Report & Recommendations issued by the undersigned Factfinder on June 4, 2009. In consideration of the short duration of that Agreement, by mutual agreement of the Parties the SERB Case Numbers were retained, and the undersigned was maintained as Factfinder during the present negotiations.

Indeed, as counsel for the Union correctly points out, with the sole exception of the Corrections Officers, the undersigned has served as a neutral in all of the City's negotiations with its safety forces for collective bargaining agreements entered into within a period spanning more than a year. Accordingly it is necessary that conclusions and impressions developed early on regarding the City's financial circumstances and prospects be carefully reevaluated on the basis of current information.

### **The Employer's Ability to Finance and Administer Proposed Terms**

Notwithstanding the Union's caution, the evidence adduced at hearing provides little encouragement that the City's financial condition has improved over the last year. Between December of 2005 and December of 2008 the City's General Fund Revenues from all sources increased slightly in 2006 from \$11,276,860 to \$11,567,217, then declined progressively to \$11,479,892 in 2007 and \$11,139,263 in 2008. General Fund Revenues from all sources were \$7,887,552.19 in August of 2009, as compared to \$7,984,161.37 in August of 2008 - a decline of some \$96,609.18. Income Tax Collections through June of 2010 indicate a shortfall of some \$227,559.27 between budgeted revenue projections of \$4,522,258.49 based on 2009 income tax revenue figures, and an actual June, 2010 YTD net income tax revenue of \$4,316,699.22.

General Fund Balances carried forward reflect a similar decline: the City's ending General Fund balance was \$2,145,541 in December of 2005; \$1,775,745 in 2006; \$1,901,683 in 2007; and \$1,168,096 in December of 2008. However, as of August of 2009, the ending General Fund Balance was \$1,626,942.63, as compared to \$1,599,651.53 at the same time in 2008. That increase, the City contends, was largely due to a reduction in spending of some \$860,000 over 2008. As of June, 2010 the City's General Fund held an unencumbered balance of \$1,449,219.44.

In addition to the declines noted above, in late April of 2009 the City was notified by the Cuyahoga County Auditor that real estate property valuations would be adjusted in 2009, resulting in an average decrease in real estate valuations in Broadview Heights of some 7%. Evidence indicates that actual reduction in property values within Broadview Heights may approach 10% for 2010. There is no immediate prospect that these values will rebound substantially.

The bleak financial picture painted by the City was essentially unrefuted by the

testimony of Union Forensic Accountant Mary Schultz, CPA. Thorough in her analysis and informative in her testimony, Ms. Schultz nonetheless testified that the City's financial transactions were fully legitimate, and concluded that "the [anticipated] General Fund 2010 year-end balance [of \$1,119,000] looks discouraging for FOP salary increases. . . ." Having reached that conclusion, Ms. Schultz suggested that other funds might be reallocated to supplant General Fund expenditures, freeing money to provide for FOP wage increases.

Among the suggestions proposed by Ms. Schultz were:

Reallocation of some \$115,000 in income tax revenues not required in the City's Storm Sewer Fund, which the Union argues has benefited from a storm sewer fee providing over \$500,000 annually. As a result, Ms. Schultz suggests, the current \$115,000 allocated to the sewer fund is unnecessary, and could be used to offset wage increases to the City's Police Officers. In addition, the Union proposes that, while \$222,000 in wages are paid from the Storm Sewer Fund, the OPERS and Medicare retirement benefits related to those wages are not paid from the Fund, leaving – at 15.4% - over \$34,000 that could be expensed to the City's Storm Sewer Fund as opposed to the General Fund.

Based on the City's projections, Ms. Schultz suggests that the Tree Commission Fund will contain a balance at year's end of \$64,000, which could offset property maintenance salaries presently allocated to the General Fund, as well as covering \$40,000 currently allocated for Land Maintenance. The Tree Planting Fund will have a projected year-end balance of \$29,000, which the Union contends might be reallocated to offset Land Maintenance salaries currently paid from the General Fund, a suggestion the City maintains is currently being implemented.

Additionally, the Union asserts that some \$84,000 in projected year-end funds in the Employer's Special Law Enforcement Trust Fund. The fund, says Ms. Schultz, contains a budget for wages, supplies and other miscellaneous expenses, that may be utilized for Police wages. The City maintains that wages paid in through the fund may be restricted as to purpose.

Based on the City's revenue and expenditure estimates for 2010, the Union asserts that the Law Enforcement Education Fund will contain a year-end balance of \$24,000. There were no expenditures from the fund in 2008 or 2009, and no budget exists for 2010. As there is a Wage account in the fund, the Union speculates that direct payment of Police wages may

be a lawful expenditure. However, the City is obligated to pay both expenses and wages under the Agreements, should they arise.

Finally, Ms. Schultz identifies a holding account for Guaranteed, i.e. developers', Deposits labeled as "Other Funds". These monies appear to the Union to be on deposit for engineering purposes, and will have a projected balance of \$444,000 at the end of 2010. These monies, the Union suggests, could be reallocated to offset the \$160,000 General Fund budget of the Engineering Department.

In all, the FOP has identified some \$495,000 in funds, which will, it contends, when added to the City's projected General Fund balance of \$1,119,000 provide a 2010 year-end General Fund balance of \$1,614,000, equal to 14.5% of budgeted expenditures.

### **Comparables**

In conditions of general economic decline - and the specific financial condition of Broadview Heights - considerations of internal rather than external parity must be afforded greater weight in formulating the Factfinder's recommendations than wage increases granted by other jurisdictions under other economic constraints. Therefore, consideration of wages paid in comparable communities, as required by 4117-9-05(K)(2), must also include "factors peculiar to the area and classification involved". In that regard, it is probable that the wage increases afforded bargaining units previously cited by the FOP were negotiated in better times, and in communities not then contemplating the economic downturn of relatively recent onset.

As alluded to above, in addition to the Patrol and Sergeants' Units represented by the FOP, the City's Firefighters are represented by Northern Ohio Fire Fighters, IAFF Local 3646 (Firefighters or IAFF) and its Police Dispatchers by the Ohio Patrolmen's Benevolent Association (OPBA).

In September of 2009, largely on the basis of the City's recently-concluded negotiations with its Corrections Officers, this Factfinder reported and recommended a wage increase of 5%, to become effective in the final quarter of that three-year agreement. With the addition of a modest equity adjustment, that recommendation was awarded by the Conciliator.

Under the terms of Factfinder Robert Stein's Report & Recommendations, IAFF bargaining unit members received no wage increase for the period January 1, 2009 through

June 30, 2009; an increase of 2% for the period June 1, 2009 through December 31, 2009; and an additional 1% increase for the year 2010. Additionally, the language accepted at Article XXXVI of the Firefighters' agreement included a "me too" clause, providing for matching adjustment should any of the City's other bargaining units receive "general wage increases in 2009 or 2010 that are greater than those provided for [in the Firefighters' agreement]."

The IAFF agreement further provided for re-opening of negotiations regarding wages and health care for calendar year 2010 pursuant to the provisions of ORC 4117.14. Choosing to exercise the reopener, the Parties conducted negotiations regarding a number of issues, ultimately presenting to this Factfinder the issue of compensation. In their negotiations, the City sought to take back the Firefighter's 1.5% increase for 2010 by means of a reduction in uniform allowances due under their agreement. In addition to the wage freeze for 2010, the City proposed increases of 1.5% beginning on January 1<sup>st</sup>, 2011 and additional increases of .75% on both July 1<sup>st</sup> and November 1<sup>st</sup> of 2011.

Rather than requiring Firefighters to repay the 2010 wage increase already paid, this Factfinder recommended that the November 1<sup>st</sup>, 2011 wage increase of .75% proposed by the City be eliminated. Thus, the Report & Recommendations provided for a 2010 wage freeze; a 1.5% increase in Firefighter's wages on January 1, 2011; and an additional .75% increase on July 1<sup>st</sup>, 2010. The Factfinder's report was rejected by the IAFF, and as of this hearing the Firefighters are proceeding with Conciliation.

Assuming the Report and Recommendations are upheld through interest arbitration, the City's Fire unit has or will enjoy wage increases amounting to 2.25% for the remainder of their Agreement.

### **Public Welfare**

Finally, the Factfinder is not unmindful of "[t]he interests and welfare of the public . . .", a consideration required under OAC 4117-9-05(K)(3). In that regard, the City has undertaken layoffs and reductions in force by attrition in other bargaining units, as well as certain un-represented City employees. The Employer argues that granting wage increases sought by the members of Lodge 15 might ultimately result in layoff of safety forces.

In consideration of these factors, and those discussed below, the Factfinder respectfully renders this Report & Recommendations.

## **FINDINGS AND RECOMMENDATIONS**

### **Article 27**

#### **Wages**

##### **FOP Proposal:**

Lodge 15 seeks wage increases and other compensation of 1.5%, 3% and 3%, totaling 7% over the life of a three year Agreement. The Union also proposes language that would provide a reopening of negotiations would any other safety force receive increases in compensation greater than those afforded FOP members in any of the three contract years.

##### **City Proposal:**

The City proposes a two year Agreement, with a freeze of bargaining unit members' wages in 2010; and a 1.5% increase in 2011, which the Employer contends will maintain parity with the its Firefighters.

##### **Findings and Recommendations:**

Regrettably, the evidence presented in this proceeding does not support a recommendation of the wage increases sought by bargaining unit members. While Lodge 15 has been exceptionally proactive in its attempt to identify discretionary monies available to help meet its compensation proposal, even its Forensic Accountant is forced to concede that the City's financial position does not militate for the wage increases sought by the Union.

Neither do the Funds identified by the FOP satisfactorily offset the Union's proposals. Many of the discretionary allocations urged by Ms. Schultz would transfer balances that are non-renewing. Others are, in fact, already being undertaken by the City. Still others are of specific purpose, and are not susceptible to the reallocation urged by Ms. Schultz. Nor do the Union's proposals consider or offset the cost of me-too provisions in other collective agreements.

As in many negotiations regarding safety forces, internal parity is worthy of significant consideration. As noted by this Factfinder and others, in addition to being mandated by 4117-9-05(K), one of the realities of public sector safety services is a traditional tension between Firefighters and Police Officers; a tension which sometimes results in unfortunate resentment, and even animus. In Broadview Heights there is evidence to indicate that, should this Factfinder recommend compensation below that already offered the City's

Firefighters, such strained relations between the two forces might result in an adverse effect on “the normal standard of public service”. Conversely, if the Factfinder recommends compensation above that offered other safety forces – a course not in any case supported by the City’s current financial position – safety force morale might also be expected to suffer. Accordingly, the recommendation is a two year Agreement reflecting the terms recommended to the IAFF bargaining unit; i.e. a freeze on 2010 wages; an increase of 1.5% of base wage rates effective on January 1, 2011; and an additional increase of .75% on July 1, 2011.

However, the precise terms of the Firefighters’ agreement have yet to be determined. The compensation afforded the IAFF unit is subject to interest arbitration. Thus, if internal parity is to be the dispositive factor in this Report, a recommendation of the “me-too” reopening language sought by the Union serves the interest of that consideration

Accordingly, the Factfinder recommends a wage freeze in 2010; a 1.5% increase in base wage rate effective January 1, 2011; and an additional increase of .75% on July 1, 2011. Additionally, language providing for a reopening of negotiations should any other safety force receive increases in compensation greater than those afforded FOP members in any of the three contract years is also recommended.

### **Article 38**

#### **Duration**

#### **FOP Proposal:**

Consistent with its compensation position, the Union proposes a three year Agreement.

#### **City Proposal:**

Consistent with its position on wages, the City proposes a two year Agreement.

#### **Findings and Recommendations:**

The undersigned believes that in most cases the resources required in bargaining for successor contracts militate for three year collective agreements. However, in the present case, the City’s future prospects are too unclear as to justify binding either Party for longer than the next roughly eighteen months.

Accordingly, it is recommended that the Agreement become effective on January 1, 2010 and remain in full force and effect through December 31, 2011, subject to the terms of

the Compensation recommendation above.

