

2009 JUN -1 A 11: 58

**Before the State Employment Relations Board
State of Ohio**

In the matter of

City of Perrysburg
Employer

Case No. 08-MED-09-1052

And

Sandra Mendel Furman,
Fact finder

IAFF Local 3331
Union

FACTFINDER'S REPORT

Procedural Matters

Pre hearing statements were received by the fact finder and served by each party upon the opposing party prior to the hearing. There has been substantial compliance with OAC rule 4117-9-05 (F).

The hearing was held on May 5, 2009 at the Perrysburg Municipal Building. The City and the Union had engaged in multiple bargaining sessions. All issues were resolved except wages. The contract expired February 28, 2009. The parties signed an extension agreement through April 30, 2009.

Mediation was attempted by the fact finder but it did not result in agreement. A full hearing was had. The parties presented argument and exhibits in support of their respective positions. Gary McBride and David Smigelski represented the City. John Alexander is the City Administrator and the Finance Director is David Creps. Kelly Louderbeck is the Human Resources Director. These persons presented testimony or answered questions at the hearing. Fire Chief Jeff Klein was also present.

The Union was represented by Michelle Sullivan. Union officers and members present were Roy Hollenbacher, District Vice President, Tom Granata,

Local President, Fred Kyle, Local Vice President and-Nathan Burtscher negotiations committee member.

The report is submitted at the date and in the manner stipulated by the parties.

Findings of Fact

1. The City of Perrysburg is a 10.5 square mile municipality located in Wood County in northwest Ohio.¹
2. City population is approximately 19,000. The 2000 census indicated a population of 17,042.
3. The City has approximately 120 represented employees and 35 non bargaining unit employees city wide.
4. The City has a Mayor as the CEO. The Mayor presides at City Council. His vote is only counted in the event of a tie.
5. The OPBA represents the sergeants in the police department. Ohio Council 8, AFSCME, AFL-CIO represents the Service Department employees The IAFF represents the firefighters.
6. There is no joint bargaining.
7. Historically similar but not identical wage and benefits have evolved for the City employees.
8. In 2006 the police units received a slightly more favorable wage adjustment than the IAFF. The OPBA wage progression (steps) was compressed. Also, in the second year of that contract there was a one time adjustment of 2.15% in addition to the overall increase.
9. There are three police department units. (Sergeants; Patrol; Dispatcher/Animal Control.)
10. The police units wage settlements for the next three years are: 3.25% in 2009; 3% in 2010. The third year the parties agreed to a wage re opener. The police contracts are ratified.

¹ The fact finder notes that different sources in the record stated different square mileage. This is a non determinative fact.

11. Police receive 15 minute roll call pay and Sergeants receive ½ hour roll call pay. This amounts to daily overtime.
12. The IAFF unit is the second unit to bargain. Bargaining is on going (as of 5-5-09) in the AFSCME unit.
13. The IAFF has been the bargaining representative since 1991. It represents all full time non probationary firefighters and assistant fire chiefs.
14. There are 22 persons in the IAFF bargaining unit.
15. The City has the current ability to pay for the wage increase sought by the Union for the 2009 year.
16. No employees have been laid off to date.
17. The parties enjoy good labor relations.
18. There are four pay grades and 10 steps in the parties' existing collective bargaining agreement.
19. Unlike several of the comparables cited by the respective parties, all persons hired entry level at the City are paramedics. This fact is unique to all comparables cited by the parties.
20. Although the classification of fire inspector does not exist in the unit description it is assigned to grade 15.
21. The Lieutenant position is assigned to grade 15 and works a 24/48 schedule.
22. The Assistant Fire Chief classification is assigned to pay grade 16 and works a 24/48 schedule.
23. Overtime is paid based on the language in Article 5.2.
24. The contract when ratified will be retroactive to 3-1-09 by agreement of the parties.
25. In 2008 the statewide wage increase averaged close to 3%.
26. Due to the date of the fact finding there was no evidence presented of a state wide trend for 2009 wage increases. However there was anecdotal evidence and some newspaper articles regarding wage freezes, give backs and layoffs in neighboring municipalities.

27. In addition to municipalities across the state experiencing layoffs, furloughs and wage freezes, the State and counties are likewise experiencing shrinking revenues, furloughs and layoffs. The City presented the City of Findlay's situation (layoffs of safety forces) as symbolic of the area's budgetary woes.
28. Unemployment figures for 2008 were the highest in decades. Recent unemployment figures are trending upwards to near historic levels.
29. Perrysburg's major employer is Owens Illinois. Employment appears stable. OI is not automotive dependent. Other employers include a solar panel company named Willard and Kelsey with thirty employees. Based upon another recent case in this area, the fact finder takes administrative notice of the fact that northwest Ohio is positioning itself as a leader in the solar energy area. Thus the Willard and Kelsey enterprise may be an expanding employer.
30. Continuing uncertainty in the economy has the City administration unable to forecast responsibly about future revenues for the next several years.
31. Many City residents are/were employed in the auto industry which has been hard hit in northwest Ohio.
32. Both parties agree that the area economy has been hard hit.
33. General Revenue Fund (GRF) revenues increased in 2008 over 2007. Both parties agreed that the "bump up" in 2008 was an anomaly; 2009 is more likely to mirror 2007.
34. The City's unencumbered balance for 2008 was \$3,7373,219.
35. City projections project decrease in actual revenues in 2009 compared to 2008. Income tax revenues declined from December 08 through March 2009. This represents a 30% decline in 2009 compared to 2008 for the same period.
36. The City has for years acknowledged the need for additional fire stations. Plans exist for an additional station. Opening of the additional station would likely require new hires. No ground has been broken for

the new station. There was no statement made at the hearing about the new station opening during this contract period.

37. The City has two additional firefighter positions in the 2009 budget. It did not indicate it had a hiring freeze in place. There is one additional firefighter indicated in the 2010 personnel projections.

38. The City bears the costs of training, equipment replacement, equipment maintenance, salaries and benefits. By way of example, it recently purchased a ladder truck for \$850,000. It plans to replace a pumper at a cost of \$600,000.

■ Despite a conservative forecast income tax revenue increases may occur due to annexation activities. There are several pockets of residential areas that are susceptible to annexation during the contract period. Increased population centers result in both increased revenue and increased demands for services.

40. The City notes that annexation is historically rigorously opposed by the territory proposed for annexation. If the Heilman addition annexation occurs it won't take place until 2010.

41. There was no information in the record about new businesses currently opening in Perrysburg. There was scant information presented about expansion of existing businesses.

42. There were no announced business closings or re locations.

43. The City did not receive federal stimulus money.

44. The recently opened (four years ago) retail complex known as Levis Commons may be hurt by the even more recent opening of a newer retail complex in Maumee. Retail nationwide is down in sales.

45. For jurisdictions in northwest Ohio it appears that Perrysburg starting wage rates for firefighters are at the middle range to higher range per the City's comparables. The City cites Bowling Green; Maumee; Sylvania Township (including Sylvania City); Tiffin; Perrysburg Township; Findlay; Defiance and Van Wert as

comparables. All cities are located in Northwest Ohio with differing economic bases and differing size populations.

46. In one of the Union's comparables exhibits Perrysburg firefighters starting wage rates are likewise midrange. The Union argued relevant comparables were jurisdictions in the greater Toledo area: Toledo; Sylvania Township; Bowling Green; Maumee; Perrysburg Township and Oregon. It also pointed out significant factors differentiating Perrysburg.²
47. For jurisdictions in northwest Ohio the Perrysburg ending wage rate is the third highest per the City's comparables chart.³
48. In the Union's wage comparison chart four geographically close jurisdictions receive higher ending wages than the Perrysburg fire unit.
49. The city of Toledo and the City of Maumee both recently negotiated wage freezes for non fire units. Maumee's wage freeze is for 2009 and 2010. Maumee's firefighters received a reduction in the minimum hours of work in the work week.
50. Bowling Green recently settled its contract for firefighters with no increase for 2009 and wage re opens the other two years of the contract.
51. Health insurance is 100% City paid. The benefit structure was changed in the last collective bargaining agreement. The 80-20% change in the last contract has resulted in higher costs to employees.
52. The City proposes 2.25% wage increase in 2009; a 2% increase in March 2010 in the form of a lump sum payment (based upon 2600 hours of work); and a wage re opener for 2011.
53. The Union proposes a 3.5 % increase in 2009; 3.25% in year two of the contract and 3.5% in 2011.
54. No prior collective bargaining agreement had a re opener position.

² For example: Oregon has an industrial base. Perrysburg firefighters generally work more hours than neighboring jurisdictions.

³ Lucas County provides financial support to the fire departments in Maumee and Sylvania Township. Perrysburg is in Wood County. No similar county support is received.

55. The predecessor agreement had the following wage increases: 2.75-3-2.75%.
56. The City has sufficient carryover to fund the increases each year of the agreement. \$ 5.9 million was transferred from the general fund for capital improvements but has not been spent to date. There is no inability to pay.
57. The City's carryover is in excess of the minimum required by municipal bond rating agencies. The City maintains an Aa Moody's rating, the second highest possible.
58. The parties agreed to expand the counties of residence for the bargaining unit. Now firefighters may live in Findlay and Tiffin, despite the distance from Perrysburg. This is a non economic benefit according to the City.
59. Recruitment is not a viable concern raised by either party.

ISSUE: WAGES

The Union seeks increases each year of the contract: 3.5%; 3.25% and 3.5%. Summarizing the Union position:

- Its requests are reasonable and allow the unit membership to keep pace with inflation and increased costs of living.
- Its proposed wage increases are required to keep Perrysburg competitive.
- Although there are clear economic pressures in the economy the membership has been hard hit by inflation and the economic downturn. The City's proposals are inadequate to keep pace.
- Perrysburg is better situated than many of its neighboring jurisdictions. It is not auto dependent.
- Suburbs in Cleveland-Columbus-Cincinnati paid higher starting and ending wages than Perrysburg in 2008. Many of those jurisdictions provide pension pick up, a benefit not available in Perrysburg.

- The City cannot prove an inability to pay. It currently maintains reserves. Its reserves are in excess of those recommended by bond rating companies.
- A wage re opener typically bodes poorly for a Union. It is rare that a wage re opener puts employees in a position better than the year prior.
- Annexation is likely to occur bringing more revenue to the City.
- Past increases in the 2006-2009 agreement were behind statewide averages.
- The Police unit received an advantage in 2007 that was not available to its membership. This has not been “made up.”
- Neither Bowling Green nor Findlay is a fair comparable. There are significant distinguishing factors in terms of population, economic base and median income. The specter of layoffs and zero wage increases experienced in those jurisdictions are not even argued by the City as possibilities for Perrysburg.
- Despite 100% City premium payment, the health insurance plan results in significant out of pocket costs for its membership in high ticket areas of emergency care and surgery.

The City counters that the Union’s requested wage increases are unreasonable in light of the following:

- The City has no guaranty of increased revenues for any of the three years of the contract.
- A lump sum payment can much more easily be budgeted and paid than an across the board increase as argued for by the Union.
- Income is trending sharply downwards for 2009. If the trend continues, the City will be nearly a third less solvent than in 2008.
- There is no ability whatsoever to predict revenues for 2011.
- The City wants its workforce to maintain a relative ranking of mid position to slightly above comparable jurisdictions. The “3 Cs” suburbs are poor comparables. Northwest Ohio shares few

characteristics with the cited suburbs. It bears a greater similarity to Youngstown-Akron-Canton suburbs for comparative purposes.

- The City points out that it is highly unusual for any employer to offer 100% paid health insurance. Although this matter has been "signed off" by the parties, the fact finder should consider this benefit when evaluating the parties' positions.
- Annexation plans do not amount to annexation facts. One of the communities has many older or retired persons that would not significantly contribute to the income tax.
- Spending its reserves affects bond ratings, is not fiscally responsible and fails to protect the future growth and stability of the City.

The City argues that the appropriate compensation package is 2.25%; a lump sum one time payment equivalent to 2%; and a wage re opener to discuss wages only in 2011.

Recommendation

The Union seeks a three year increase above 3% each year of the contract. It states that although there are clear economic pressures in the economy the membership has been hard hit by inflation and the economic downturn as well. It reiterates that the police received more favorable treatment in 2006 and its membership should be treated fairly. It notes its step increases are lengthy in comparison to comparable jurisdictions.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).⁴ Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record. The fact finder concludes that the dominant factors in this case are public interest and welfare,

⁴ The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

ability to pay and the other traditional collective bargaining factors.⁵ These factors coalesce in favor of a compromise position.

The fact finder does not believe that the Union made a convincing case for its suggested increases. Comparables do not change that opinion. Mid range is not the bottom range.

Economic realities in 2009 suggest a gray picture. In this jurisdiction unlike many of its neighbors there have not been the brutal effects of auto related closures. But little evidence existed in the record of a trend towards economic growth and expansion. The emphatic reluctance of the City to project out to a third year's income is not designed to avoid its financial responsibilities to this bargaining unit. The past history of wage increases convinces the fact finder that the City's push for a third year re opener is prudent management of the City's budget. It is clear that a re opener results increased costs to both sides in terms of bargaining expenses. This fact finder does not routinely or casually recommend re openers to avoid tough decisions. But the City made a persuasive case that a re opener in year three of the contract is the rational response to economic realities.

The Union concerns that a re opener bodes ill for its third year are worthy of some consideration. If 2009 revenues continue to trend downward for the remainder of the year and 2010's outlook is uncertain, then the Union is reasonable in seeking insulation from a real downturn. This is an appropriate quid pro quo for the third year re- opener. It may be that fortunes will markedly improve in 2010 allowing a market or better increase in 2011. But in the current climate it is perhaps a rose colored glasses outlook. Thus the fact finder is inclined to accept the Union's position that year two compensation be more generous than the City's offer of a lump sum. Clearly a lump sum settlement does not have the compounding effect of an across the board increase. The

⁵ In this case, the lawful authority of the public employer was not in dispute on any issue submitted to fact finding. The effect on public services was not in dispute. There were no stipulations presented. Past collective bargaining agreements showed no re opener language and no history of lump sum payments in lieu of percentage increases. The decision of the act finder to recommend a re opener and reject the lump sum settlement approach for year 2 is explained infra.

City's desire to protect its reserves is recognized but the competing issues of fairness and equity must also be recognized.

The parties have not historically bargained significantly different packages for its unionized workforce. The fact finder is not willing to recommend a wage increase out of synchronicity with the police department. No compelling argument was presented by the Union to support that result. Interestingly the City offered no testimony as to why its firefighters should receive a lesser settlement than ratified by the Police. The OPBA settlement seems an appropriate resolution in this matter.

It is again noted that jurisdictions throughout the state are experiencing wage freezes, wage cuts and layoffs. Even if the City has funds carried over from 2008 use of that surplus for wage increases is not mandated by law, fiscal wisdom or compelling rationale present in the record.

The fact finder weighing all the required factors and the record as presented finds that fairness, stability and the public interest are best served by holding the City to match the wages established for the police in years one and two of the agreement.

The fact finder further notes that the City has planned for additional personnel increases in 2009 and 2010. This is an indicator that the City is not positioned for layoffs and *intends* but is not bound to fund those positions.

Although the recommended wage increases for years one and two are less than the Union the recommended amount is significantly more than the City offered.

In summation, a balancing of interests and equities in this tough and uncertain bargaining climate serves the statutory mandates. The fact finder concludes that the following language represents the appropriate resolution of the wage dispute.

Recommendation

It is recommended that the parties approve the following language:
3.25% wage increase retroactive to March 1, 2009; 3% effective March 1, 2010 and a wages (only) re opener for the year beginning March 1, 2011.

Respectfully submitted,

s/ Sandra Mendel Furman

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Certificate of Service

An original and true copy of the fact finder report were sent by ordinary US mail on the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215; on Michelle Sullivan, Union Counsel and Gary McBride, and David Smigelski, Perrysburg counsel on this 29th day of May, 2009 . An electronic copy was also sent to the parties' representatives.

s/Sandra Mendel Furman

Sandra Mendel Furman Esq.

