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STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the matter of Fact Finding between:)	SERB No. 08-MED-10-1132
)	
THE CITY OF STREETSBORO)	Hearings: August 6, 2009
)	and October 6, 2009
and)	
)	Date of Report:
THE STREETSBORO PROFESSIONAL)	November 6, 2009
FIREFIGHTERS ASSOCAITION, IAFF)	
LOCAL # 4281)	

FACT FINDING REPORT

STATE EMPLOYMENT
RELATIONS BOARD
2009 NOV 10 A 8:50

Appearances:

Mitchell B. Goldberg, Esq., Appointed Fact Finder

For the City;

David J. Matty, Esq.,	Special Counsel
Shana Samson, Esq.,	Special Counsel
Blair Melling,	Law Director
Art Scott,	Mayor
Amy Locy,	Human Resources Director
Ted Gordon,	Finance Director
Maggie Romutis,	Healthcare/Benefits Specialist

For the Union:

Ryan J. Lemmerbrock, Esq.,	Counsel
Jim Bucks,	Firefighter/Medic
Tom Plunkett,	President, Local 4281
Luke Zarges,	Vice President, Local 4281

I. Introduction and Background.

The State Employment Relations Board ("SERB") on April 14, 2009 appointed

the undersigned as the Fact Finder for this public employment labor dispute. The parties agreed to extend the time limits for holding a hearing and issuing a report. They agreed to schedule August 6, 2009 as a mediation session with the Fact Finder. Unresolved issues remained and a fact-finding hearing was held at the City's offices on October 6, 2009. The parties agreed that the report should be issued on November 6, 2009, by mailing the same to SERB by U.S. Mail, first class, on that date.

The parties complied with their statutory obligations by timely submitting pre-hearing statements to the Fact Finder before the commencement of the hearing. They presented their respective positions on the unresolved issues, and each party submitted documentary exhibits.

The bargaining unit consists of all full-time uniformed employees of the Fire Department excluding the Chief and Administrative Assistant Chief. The CBA between the parties expired on December 31, 2008. The parties began negotiations for a successor CBA in November 2008 by agreeing to certain ground rules, and thereafter exchanging proposals and counter-proposals. Negotiations were interrupted and complicated due to a change in the City's administration, the election of a new Mayor, and the replacement of negotiations counsel. The delays and interruptions in negotiations led to the Union's filing of an unfair labor practice charge with SERB on July 10, 2009. The Union alleged that the City was refusing to bargain in good faith in violation of Section 4117.11 (A)(5) of the Revised Code. The Fact Finder understands that the matter is still pending and has not been resolved.

The Fact Finder considered all of the required factors set forth in the Ohio Revised Code, the Administrative Code, and the SERB guidelines in issuing the following recommendations on the unresolved issues. All unchanged language in the expired CBA, and all items and issues tentatively agreed upon between the parties are hereby adopted for purposes of this Report, and are hereby incorporated herein and made apart hereof.

The parties agreed upon the following issues at the mediation session on August 6 and during the presentation of the evidence and positions on October 6: (1) Article 4 – Union Membership, Meeting and Dues shall remain unchanged from its current language. The City withdraws its proposal. (2) Article 8 – Disciplinary Procedures; the parties agree to the Union language change proposal for section 8.06 and to the City’s language proposal for section 8.09. (3) Article 10 – Compensation: Wages; the City agrees to the Union language change under 10.01 as set forth on page 5 of its statement, except for the number of “2600.” (4) Kelly Time, Section 4 (b); the parties agree to the Union language changes in Sections 1 and 2 except for the numbers (pp. 5-6 on the Union’s statement). (5) Differentials, Section 4 (d); the parties agree to Union proposed language for sections (B) and (C), but not for (A), which refers to the word “senior.” (6) Uniform Allowance, Section 4 (c); the parties agree to Union proposed language in sections (A), (B), and (C), but there is no agreement for (D). (7) Officer-In-Charge Pay, Section 4 (f); the parties agree to Union proposed language on page 10 of its statement. (8) Overtime –New Article; the City agrees with Union proposed language in section .01, .02, .03 and .04. The City objects to the Union’s proposed language in .05. (9) The parties agree to the

name change for Article 11, Compensatory Time as proposed by the Union. (10) Sick Leave – New Article; the City agrees to the following Union proposed language (pp. 15-16 of Union statement), sections .01, .02, .04, .05 and .06. Section .03 is not agreed upon with respect to the Union’s proposed numbers. With respect to .07, the City added additional language to the Union’s proposal, which the Union agrees to, but the section must be re-numbered. (11) Transitional Work Program – New Article; sections .01, .02, .03, .05 and .06 are agreed upon (pp. 22-23 Union statement). The first sentence in section .04 is removed and shall now read: “The work schedule, duties performed, and hours to be worked while on light duty is Monday – Friday, 8:00 a.m.- 4:30 p.m.” A new sentence shall be added to section .04 at the end, which shall read: ‘the program provides flexibility for doctor’s appointments and physical therapy appointments.’”

The Union agrees with the following City proposed language changes as set forth in its statement: (2) Preamble, (3) Recognition, (4) Negotiation Procedure, (6) Work Rules, (7) Management Rights, (8) Grievance Procedure, (10), Probation, (11) Mileage and Meal Allowance, (12) EMS State Certification and Certification of Education, (13) Seniority, (14) Layoff and Recall, (15) Vacations, (16) Education Leave, (17) Court Leave, (18) Leave Without Pay, (19) Family Medical Leave, (20) Substance Testing/Drug and Alcohol Testing, (21) Savings Clause, (22) Successor Agreement, (23) Miscellaneous, and (24) Term. The City proposal on Union Membership, Meetings and Dues (5) is withdrawn. The City agrees to the Union proposed language under the Disciplinary Procedures section in Union proposed 8.06, and the Union agrees to City proposed language in 8.09 (City proposed 9.09).

II. Economic Evidence.

Streetsboro is a strategically located community near two interstates, the I-80 toll road and the I-480 freeway. It borders the affluent community of Hudson to the west, and the affluent community of Aurora to the north. It also borders the Village of Sugar Bush Knolls, Franklin Township and Shalersville Township. It is located in Portage County to the north of Ravenna, the county seat. It experienced a 24% increase in population from 1990 to 2000, and a 16% increase from 2000 to 2007. The population is expected to grow to 17, 940 by 2020. The population is projected to grow until 2025, when its rate of growth will begin to decrease. It nevertheless is expected to experience positive growth due to its availability of land and proximity to multiple transportation networks.

The estimated median household income in 2007 is \$54, 845, with a high percentage of the population making between \$50,000 and \$74,000. This is above average, but the number of residents making above \$200,000 is below average. The 2009 Comprehensive Plan states that the diversity of incomes can support a wider variety of businesses and services and provides for greater sustainability (p.18). The unemployment rate has increased as in the county, state and country because of the present economic downturn, but the Plan states that this is not expected to continue in the long term (p.19). Housing values are lower than nearby Aurora, Solon and Hudson, and the City has more multi-family units. It undoubtedly will continue to be adversely affected by the housing glut and falling values, but probably less so than in other areas with more expensive housing.

Job growth in the Akron MSA is predicted to be 4.2% from 2006-2016.

Manufacturing could see a 10.5% drop, while education and health services is projected to grow by 18.1%. Streetsboro's economic base is strong due to its strategic location to various modes of transport, which allows it to compete for sites on a regional scale (Plan p.80). There is a strong industrial market, high land prices and low vacancy rates (pp.80-81). It participates in an Enterprise Zone that has increased development, but which also provides for real and personal property tax exemptions (p.81).

The City anticipates \$15,567,030 in total revenue for 2009, \$8,000,000 of which will be received through property tax, income tax and hotel/motel tax. The citizens recently passed an income tax increase to 2%, which is expected to increase collections by \$2,000,000 (p.81). The general fund overview, not considering the income tax increase shows that the tax was needed due to the dramatic decline in the unencumbered ending balances from 2007 to 2009. The actual balance in 2007 was \$1,479,288. By 2009 it was estimated to be \$258,888 without the added revenue from the income tax increase.

The City is concerned that the economic downturn has taken more of a toll than expected. Unemployment is high, causing income tax collections to be below expected levels notwithstanding the tax increase. Budgeted revenue through September 2009 was \$6.6 million, but receipts were only \$4.9 million through the same period, or 73.58% of budget. The revenue should have shown a larger increase, but the increase is not evident because of offsets due to other poor economic factors such as increased unemployment.

The City is concerned that these developments will negatively impact its surpluses, and that the additional 1% tax increase will not substantially improve its financial picture.

On balance, while the City's financial picture is better than some other northeast Ohio cities, it will continue to face the overall problems of unemployment and lower real estate values. Accordingly, while it does not claim an inability to pay for the Union's proposals, it must nevertheless carefully manage its budget so as not to incur the severe problems that other public entities and agencies are now experiencing. This includes layoffs, furloughs and drastic cuts in services now being implemented by the state and other municipalities.

III. Unresolved Issues.

1. Article 9 – Hours of Work

The Union is primarily interested in rectifying their members' low pay compared to surrounding fire departments. Part of this has to do with the members' work hours. They now work 52 hours, two more than the other comparable departments, while they earn over \$4.50 per hour less at the starting and top pay levels. This department is larger and busier than half of the surrounding departments. The Union proposes to reduce the work hours to 50 in addition to addressing the wage disparity. The passing of the income tax increase provides the City with the current opportunity to rectify this inequity.

The City recognizes certain pay inequities and has addressed them in its wage proposal. Its comparables show that a 52-hour week is the norm in surrounding

departments. It has proposed a wide sweeping plan to dramatically increase the members' income levels and place them on a par with the other departments. It proposes a 52- hour workweek of 2704 hours per year together with the elimination of the existing Kelly day schedule. There would be 8 hours of mandatory overtime per pay period; each pay period is 2 weeks or 104 hours. The fire suppression personnel would work the Kelly days and receive more income with the addition of 8 hours of overtime each pay period, or an additional \$228.80 per pay period. This amounts to a 12.5% annual compensation increase. This proposal will provide greater staffing and coverage for the residents. This will assist the Chief in his goal to grow the department and increase full-time employment.

I find, after reviewing the comparables, that Streetsboro is not out of line in terms of work hours, to the extent that a change needs to be imposed by a fact finder at this time. Ravenna is at 52, and Solon is at 51.7. Aurora is at 53. Reducing the workweek will result in increased costs for the City in terms of staffing, coverage and overtime. This is not the time to reduce the work hours and at the same time demand more wages and compensation. Also, it is not the time for the City to demand more mandatory work time, even if it produces more compensation.

Recommendation. The workweek shall remain at 52 hours. The language in this article shall remain unchanged, except for the changes agreed upon between the parties.

2. Article 10 – Compensation: Wages

a. Standard Hourly Rate of Pay.

Recommendation. Section 10.01 as proposed by the Union (p.5 statement) shall be implemented, with the understanding that the workweek of 52 hours shall apply, as noted above.

b. Kelly Time.

Recommendation. The Kelly time shall remain unchanged. Section 10.02 shall be modified in accordance with the Union proposal (p. 6 statement) except for the retention of the current Kelly days and schedule.

c. Wages and Steps.

Streetsboro starting and top step pay levels are dramatically below the average of 15 departments in the region. Streetsboro starting pay is \$12.04, compared to the average of \$16.61. Aurora is at \$19.02, Kent is at \$16.77 and Ravenna is at \$15.83. At the top pay range, Streetsboro is at \$17.63 compared to the 15-department average of \$22.49. Aurora is at \$21.86, Kent is at \$22.30 and Ravenna is at \$19.41. There is no question that an equity adjustment is justified. The City has recognized that this is the case. Its goal is to develop a top-notch full-time staff of fire personnel. In order to accomplish some headway towards this goal, and adjustment is necessary.

I am recommending a one-time equity pay adjustment for each member in the amount of 7% payable immediately after the execution of a new CBA. It must be understood that this adjustment is recommended solely because of the current inequity with Streetsboro's pay rates compared to other similarly situated departments. This

recommendation should not be construed as having any relationship to the recommendation for the change in the health insurance plans, *supra*. This recommendation stands on its own merit and would be issued regardless of any change in health insurance benefits. The 7% one-time equity payment is in addition to the following recommended annual wage increase for each contract year.

Recommendation. The City shall pay a one-time equity payment of 7% across-the-board for each member due immediately after the execution of the new CBA. A 2% across-the-board wage increase shall be paid in addition to the equity payment, retroactive to January 1, 2009. Another 2% across-the-board increase shall be paid effective January 1, 2010, and a final 2% across-the-board increase shall be paid effective January 1, 2011.

d. Steps.

Recommendation. I recommend a change in pay steps to 4 over the three-year contract.

e. Differentials.

Recommendation. I recommend the Union proposal (statement, p.8) for Section 10.04 (A) except the word "senior" shall be removed.

f. Uniform Allowance.

Recommendation. The rollover under section (D) in the Union's proposal (statement, p.9) shall be \$50.00. The remaining language in the Union proposal was agreed upon.

3. Overtime – New Article

Both parties have agreed to proposed sections .01, .02 and .03 in their respective statements. The Union wants to include the call-in pay section in .04 and a section providing for special duty assignments. The City has agreed with the call-in pay language in some of its prior conditional proposals, but has objected to the special duty provision.

Recommendation. Section .04 (call-in pay) in the Union's proposal shall be included in the CBA. Section .05 (special-duty assignments) shall be excluded from the new article.

4. Compensatory Time – Article 11

The parties agreed to the name change for this article. The Union proposes increasing the accumulation to 240 hours and 120 in carry over hours. Streetsboro is presently at 96/24 when the average among comparable departments is 170/166. The City is willing to increase the hours to 124/96. This is a cost item that affects staffing and overtime. Nevertheless, Ravenna is now at 120/120.

Recommendation. I recommend that the accumulation be increased to 124 and that the rollover hours be increased to 120.

5. Benefits- Holidays – Article 14

The Union proposes to increase this benefit because under present circumstances, its members work the longest week and are paid less than comparable departments in the area. Streetsboro presently has 8 vacation and holidays, against the average of 13.5 for the 15 comparable departments. Aurora has 16 days, Kent has 13 days and Ravenna has 11. The City has recognized this disparity and proposes adding one additional floating

holiday for fire prevention employees and one additional 24-hour tour of holiday credit for fire suppression employees. The proposal is conditioned upon the Union accepting other City proposals.

The Union agrees to the floating holiday of one 8-hour day for 40-hour personnel, and one 24-hour shift for suppression personnel. It also proposes language that permits members to convert benefit time into paid compensation, 16 hours for 40-hour members, and 96 for suppression members. Moreover, the Union proposes that double time be paid to those firefighters scheduled to work on Easter, Thanksgiving and Christmas. This benefit is now given to the City's part time firefighters.

Recommendation. I recommend that prevention- 40-hour members receive an additional floating holiday, and that suppression-shift members receive an additional 24-hour tour of holiday credit. The Union's proposed cash-out language shall be included in the CBA, but the conversion into paid compensation shall be at the regular rate of pay up to 24 hours of holiday credit. The Union's double/time proposal for holiday work is rejected.

6. Sick Leave – New Article

The disputed language on this issue is the Union's proposal to change the number of absences necessary for producing a physician's report. The City proposes 2 consecutive tours for suppression and 3 consecutive days for prevention. The Union proposes 3 for suppression and 4 for prevention. The City also proposes language in .07 preventing employees who call in sick from engaging in outside activities inconsistent with their illness or injury while they are receiving sick leave benefits.

The Union believes that the additional language is unnecessary because of the other provisions that prevent abuse of sick leave benefits. The City has not established that there is any abuse problem, or that any change is needed. I agree.

Recommendation. No change. The current language shall be retained except as reorganized.

7. Health Insurance – New Article

The City, like most public and private employers, is struggling to reign in its rising health insurance costs, which accounts for a significant portion of its operating expenses. Its history can only be described as erratic. Its costs actually decreased by 7.9% in 2004 and by 7.4% in 2006. However, the costs increased by 3.8% in 2005 and by 41.3% in 2007, which was later reduced to 31.3%. The City's group is in the 51-100-population group that is highly volatile because a high number of claims and claim amounts by a small number of members can dramatically change the costs and resulting premiums. The City changed carriers to Summa in 2008. The increase premium costs for 2009 originally was 12.79%, but then was reduced to 10.63%. The City has budgeted a figure of 20% and will stay with SummaCare for 2010.

The City, through its consultant is proposing a revised plan that hopefully will contain its costs. It proposes two plan options with employee choices. Plan 5615 is more comprehensive, provides better benefits, and is more costly. Using family coverage as an example and network coverage, this plan has no annual deductible, 100% co-insurance, and no out-of pocket expenses. The cost is \$1,456.05 for the family plan.

Plan 6225, the new option, is much less expensive, at a cost of \$1,169.76 for the family plan. However, to achieve this reduction, the benefits are less. There is an annual deductible of \$2,000, with a \$2,000 maximum out-of-pocket expenditure. The costs for going out of network increase dramatically. The 5615 plan will cost the City \$1,036,443 per year compared with the annual cost of the 6225 plan of \$832,869. The 6225 plan produces a savings of 19.64%. The City wants to encourage employees to opt for the 6225 plan. It is proposing an incentive for choosing this plan by adding a 125 plan where employees can pay for their medical costs and premiums with pre-tax dollars. This plan will not be implemented until June 1, 2010 based upon the recommendation from its consultant.

Much of the negotiation time has been devoted to this issue. The Union wants to maintain the plan with the best coverage, and the lowest out-of-pocket costs. It has even suggested an alternative SummaCare plan, which it believes meets its preferences and addresses certain City cost concerns. The City is relying upon its consultant, and has settled upon the above options. It is the City's stated objective to have all of its employees participate in these plans with the same benefits, so that it can increase its group size and lessen the exposure for high claims and related premium increases. Accordingly, it has stated here that it will insist upon this plan being accepted by its other bargaining units, its non-represented employees and its administrative employees.

The major disputed issues involve the amount of employee contributions toward premiums, and maintaining caps on premium contributions so that members are not faced

with unexpected spikes in their medical expenses and insurance premium costs. The Union recognizes the City's cost and budget problems in this area. It is proposing to increase the present monthly contribution level per employee from \$100 to \$120 in 2010, and to \$130 per month in 2011. The Union looks at comparable departments as the basis for its position. Many departments, including Ravenna, still provide 100% premium coverage for its employees. Kent firefighters pay only \$60 per month for family coverage. The Union believes that it has made a large concession to the City's concerns of cost containment in this area.

The City believes that employee monthly contributions for many employees would decrease substantially under the 6225 plan. More importantly, it believes that the plan changes are necessary to address its rising and uncontrollable medical insurance costs, and that all of its employees should participate in this proposed solution. The City is proposing that effective January 1, 2010, all of its employees pay 11% toward their premiums for 5615 with no cap, 12% in 2011, and 5% of the premium cost for 6225 with no cap. The 125 plan to assist with premium payments with pre-tax dollars will begin June 1, 2010.

Recommendation. I recommend that the City's proposal be accepted with the following exceptions, based upon the premise and assumption that all of the City's employees, including the other bargaining units will ultimately be subject to the same plan choices and premium contribution levels as proposed here, with no caps. The contribution level for employees participating in the 5615 plan shall be 11% beginning on January 1, 2010, and shall remain at that level throughout the remainder of the contract. The contribution

level for the 6225 plan shall be 5% beginning on the same date. The contribution levels shall remain the same for 2011 through the balance of the contract term. In these uncertain times, it is necessary to reign in the escalating costs of health insurance premiums, a major portion of the City's operating budget. A 20% increase in premium costs for 5615 for the family plan would increase premiums by \$291.21 per month, \$259.18 of which would be paid by the City, and \$32.03 of which would be paid by the employee. The overall fact of life is that all employees will ultimately have reduced benefits and higher payments. With the poor economy, and low inflation, these costs will likely neutralize any modest pay increases that are being paid by public employers across the state and nation. City services still must be provided notwithstanding declining revenues produced by higher levels of unemployment.

Healthier employees can protect themselves by choosing the 6225 plan and paying their premium with pre-tax dollars. Those that have medical problems will probably need to stay in the 5615 plan and hope that the plan changes do not produce higher premiums and higher contributions under the percentage contribution formula with no caps. This is not a satisfactory state of affairs, but unfortunately a necessary one. The outcome for this group will be ameliorated by the fact that all of the City's employees will ultimately be in the same boat, and that their 2% wage increases will in fact result in net income increases if the City's medical insurance costs are managed through these new options.

8. Promotions

The parties agree with the City's proposal that includes reinstatement of the Captain position. They disagree with City language 29.01 that includes "part time" service within the qualification for promotion to Lieutenant. The City wants to include part time service and the Union wants only full-time service counted. The Union wants the language of 29.02 rearranged so that the certification by the Civil Service Commission is placed at the end of the paragraph after the assessment center evaluation.

Recommendation. I recommend the Union's changes to the City's proposed language. Only full-time service is counted, and the civil service certification language shall be placed at the end of 29.02.

9. Fire Prevention Bureau – New Article

The City wants to change existing language to broaden its management rights, and to remove the current suppression employees' rights to take temporary 6-month assignments in the Prevention Bureau. The Union objects to these changes because the City accepted its proposal in February with no changes. The City takes the position that any prior agreements by the former administration and its representatives at the table should not be binding upon the new administration.

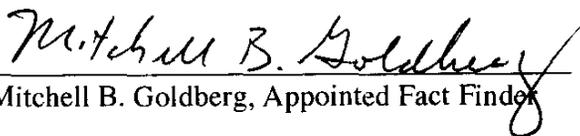
Recommendation. I recommend the status quo on this issue with none of the City's added proposed language additions to the Union language. The Union's language shall be accepted.

10. Physical Proficiency – New Article

The Union proposes language providing for a \$900 allowance for successful completion of a voluntary physical fitness program, payable each year. The Union believes this will be beneficial to the City and to the department because it will serve to improve health through preventative measures, and ultimately lower the City's health insurance costs. The City has objected to this additional cost.

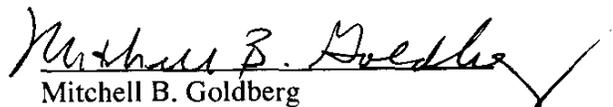
Recommendation. I recommend that the Union's proposal be accepted into the CBA. It serves a number of useful and beneficial purposes. Members will improve their health, and possibly use less medical and health services that may lower insurance costs over the long run. More importantly, members will be more fit to perform their jobs. The City and the citizens will benefit from a better performing workforce. The additional payments are necessary due to the modest wage increases of 2%, not counting the equity payment, and due to the increase in their exposure for increased medical insurance contributions.

Date of Report: November 6, 2009


Mitchell B. Goldberg, Appointed Fact Finder

CERTIFICATE OF SERVICE

This Report was served upon Edward E. Turner, Administrator, Bureau of Mediation, SERB, 65 E. State St., 12th Fl., Columbus, Ohio 43215-4213 by U.S. Mail, first class on November 6, 2009. Copies were served on the same date by U.S. Mail, first class, upon David J. Matty, Esq., 55 Public Square, Suite 1775, Cleveland, Ohio 44113, counsel for the City, and upon Ryan J. Lemmerbrock, Esq., 820 W. Superior Ave., 9th Fl., Cleveland, Ohio 44113-1800, counsel for the Union.


Mitchell B. Goldberg