

Fact-Finding Proceeding Under the Auspices of the State Employment Relations Board

In the matter of:

The City of Berea

-And-

Laborer's International Union of North America, Municipal, County and State Employees Union Local 1099

SERB Case NO.: 09-MED-09-0838

Fact-Finding Report and Recommendation

Fact-Finder: David M. Pincus

Date: June 1, 2010

Appearances

For the City

Dana Kauander  
Jim Brown  
Morris Hawk  
Mark J. Bloch

Finance Director  
Service Director  
Attorney  
Advocate

For the Union

Paul Wells Jr.  
Fred H. Kreiger  
Joseph Guarino  
Basil W. Mangano

Business Manager  
Comiteeman  
Attorney  
Advocate

Procedural Case History

The disputed matter was formally argued on May 18, 2010 before David M. Pincus, Fact-Finder, pursuant to Ohio Revised Code Section 4117.14 and Ohio Administrative Code Section 4117-9-05. The fact-finding hearing involved the City of Berea (hereinafter referred to as the City or Employer) and the Laborer's International Union of North America, Municipal, County and State Employee's Union Local 1099 (hereinafter referred to as the Union). The fact-

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finding hearing was held at Baldwin Wallace College, 275 Eastland Rd., Berea, Ohio.

The dispute involves one(1) bargaining unit consisting of twenty-nine (29) full time employees. They occupy the following positions: Laborers, CDL Technicians and mechanics.

The parties, with the Fact-Finder's assistance, were able to settle many of the disputed matters prior to the formal hearing stage of the process. In accordance with the parties' mutual request, the Fact-Finder incorporates into this Report and Recommendation, by reference, all withdrawn and resolved issues and tentative agreements. Two related issues remain at impasse: Wages and Insurance. Each issue will be discussed separately in subsequent portions of this Report and Recommendation.

#### Fact-Finding Guidelines

The following portion of this Report and Recommendation shall identify each issue in this dispute, review the parties' articulated arguments and conclude with the Fact-Finder's recommendations. The recommendations which follow, moreover, are based on evidence and testimony presented at the hearing, and the parties' respective position statements and submissions. The recommendations contained herein were also derived by relying on applicable criteria required by Ohio Revised Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a-f), and Ohio Administrative code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Administrative code Section 4117-9-05(K) as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;

#### Preliminary Comments

The City has four (4) bargaining units: Fire, Service, Dispatchers and Police. The Fire Fighter's dispute was resolved through the fact finding process, while the Dispatcher's dispute was resolved through negotiations. At the time of this particular fact finding hearing, negotiations with the Police units have not yet been initiated. The Patrol Officer unit has changed bargaining representatives via the State Employment Relations Board (SERB) process. The Sergeant unit, however, has not resolved its representation issue.

The City's proposed offers reflect recommendations made by the Fire Fighter fact finder, and accepted by the bargaining unit. This same settlement pattern was subsequently adopted by the Dispatcher bargaining unit.

## ARTICLE 13- RATES OF PAY AND ARTICLE 17- INSURANCE

### The City's Position on Article 13

The City proposes a one percent (1%) across the board increase effective January 1, 2010, a two percent (2%) across the board increase in 2011 and a three percent (3%) across the board increase in 2012. The Employer, moreover, agrees to retroactively apply this benefit.

It views the proposed wage increases as realistic based on the City's economic condition. Testimony and evidence indicate no revenue growth for the next three years. Revenue sources have declined which include property taxes, income taxes and fees. This trend is expected to continue as total revenues are expected to decline another 5.7% from 2009 to 2010 and throughout the duration of the collective bargaining agreement. (Employer Exhibit E).

While revenues dwindle as a consequence of the structured recession, mandatory expenditures out of the general fund are increasing at an alarming rate. These increases involve sick leave payouts and construction projects. (Employer Exhibit E).

The newly structured Union's wage proposal does not effectively offset the clear decrease in revenues and projected expenditures. The proposal, moreover, is warranted based on the health insurance proposal, and thus, serves as a partial offset to the city's contribution demand. Also, a six percent (6%) increase over three (3) years represents an attempt to structure a

reasonable response to the economic exigencies faced by the Employer, while addressing the needs of the bargaining unit.

The City's Position on Article 17

The City seeks to incorporate the insurance provision recommended by the Fact-Finder Binning, accepted by the Firefighter unit and subsequently accepted by the Dispatcher unit. The proposal, therefore, consists of two (2) components: A contribution section and a joint medical/hospital insurance committee. Section 17.02 shall incorporate the following language:

The employee shall contribute the following health care premium share for the actual cost of their health insurance

<u>Year</u>	<u>Percentage</u>
2010	5%
2011	10%
2012	15%

**Joint Medical/Hospital Insurance Committee**

The parties agree that in an effort to reduce hospitalization/medical costs a Citywide Joint Medical/Hospitalization Insurance Committee will be formed and with a representative from the Labors International Union of North American Municipal, County and State Employees Union Local 1099, will be established and convened at least one (1) time per year or more if practicable to review alternative insurance coverage and plans and make recommendations to the Employer. As part of this process, the representatives shall have access to all non-confidential information. The Employer shall have a senior employee as a representative on the committee and the Employer will require the city insurance representative to actively participate with the committee.

The Committee will analyze cost containment measures including, but not limited to, deductibles, co-pays, out-of-pocket maximums, prescription drug coverage and possible changes in providers. All City employees are to share in any cost reductions achieved by the Committee.

The City is experiencing economic hardships with related healthcare/ Insurance costs. To offset this condition, it examined and decided to implement measures dealing with employee contribution levels. For the longest period, none of the employee groups, both union and non-union bargaining units, were asked to provide any contribution. In 2005, however, the City initiated a fifteen percent (15%) employee contribution requirement for all newly hired non-union employees. This mandate has since been expanded to cover all non-union employees. The Firefighter and Dispatch unites agreed to incorporate the proposed contribution percentages.

The bargaining unit involved in the present dispute should acquiesce to the established pattern. Nothing justified its proposed exception. Affordability and health insurance profile requirements suggest some level of contribution. The City anticipates spending nearly \$8,097.06 in healthcare costs per employee this year. As such, the present health care bundle can only be maintained with the help of employee contributions.

The bargaining unit's status quo proposition, even with the newly devised wage proposal, does not address the City's economic needs. It, moreover, appears unrealistic to expect the Employer to monitor and implement a separate and distinct health care structure for twenty-nine (29) employees. Options suggested during negotiations, but rejected by other bargaining units, are no longer appropriate on a unit-by-unit basis. They were originally structured to be implemented on a citywide basis.

Any contributions to be realized by the bargaining unit need to be applied retroactively. If any wage increases are realized as a consequence of the negotiation process, then employee contributions need to be accrued and paid as of the effective date of the collective bargaining agreement.

The proposed joint medical/hospital insurance committee should help contain and reduce insurance costs. By meeting on a regular basis, various cost containment approaches will be communicated, discussed and potentially resolved.

#### The Union's Position on Article 13

The Union seeks a one percent (1%) increase in wages for each year of the collective bargaining agreement; with retroactivity to the agreed to effective date.

This offer is viewed as reasonable in light of the City's fallen revenue history and comparable negotiated outcomes. The Union acknowledges the legitimacy of the City's financial condition. As such, the Union modified its original wage proposal to the one presently under review; which represents a negotiated outcome much lower than the one proposed by the City.

The Union selected four (4) municipalities as comparables based on their population and economic status. The data indicate an average wage increase of 3.026% for 2010. This analysis, moreover, includes the City's one percent (1%) wage proposal which dampens the aggregate outcome. A recent SERB

Wage Increase Report documents wage increases for 2009 ranging between two percent (2%) and three percent (3%)

### The Union's Position on Article 17

The Union wishes to retain the status quo with no increase in the employees' contribution. Presently, the bargaining unit members do not contribute any amount to the insurance plan. Also, bargaining in the alternative, the Union does not feel that any recommended or agreed to contribution amount should be applied retroactively. To do so, would place this bargaining unit in an unfair situation with upcoming negotiations involving other bargaining units. They would not face retroactivity for insurance contributions as an issue.

Unlike other municipalities, the City's costs for health insurance have decreased. The City's own claims analysis indicates a decreased overall cost, as well as decreases in the average cost for single and family coverage. As such, financial circumstances do not justify the City's proposal; let alone the significant leap from the present non-contributing arrangement.

Comparables further erode the veracity of the City's proposal. Only the City of Eastlake has negotiated an employee contribution without a specified cap.<sup>1</sup> All other comparables specify a contribution amount which is capped or do not specify any contribution requirement. Even the City's own comparisons

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<sup>1</sup> Reference to the City of Ashtabula, Ohio and the Fraternal Order of Police, Ashtabula lodge No. 26 collective bargaining Agreement is inaccurate. The contribution solely deals with family and single coverage for a comprehensive dental program.

do not support the City's proposal. Most enjoy an employee contribution amount that is capped.

The Fact Finders Recommendations

Article 13- Rates of Pay

Article 17- Insurance

The remaining issues in dispute have been intertwined by the parties in terms of presentations and desired outcomes. From the evidence and testimony introduced at the fact-finding hearing, an impartial review of the record and application of statutory guidelines, the Fact-Finder recommends the following negotiated outcomes:

Article 13- Rates of Pay

Section- 13.01- Effective January 1, 2010 one percent (1%) across the board.  
Section 13.02- Effective January 1, 2011 two percent (2%) across the board.  
Section 13.03- Effective January 1, 2012 three percent (3%) across the board.

These percentages shall be retroactively applied to the effective date of the collective bargaining agreement.

Article 17.02- Insurance

The employee shall contribute the following health care premium share for the actual cost of their health insurance

<u>Year</u>	<u>Percentage</u>
2013	5%
2014	10%
2015	15%

**Joint Medical/Hospital Insurance Committee**

The parties agree that in an effort to reduce hospitalization/medical costs a Citywide Joint Medical/Hospitalization Insurance Committee will be formed and with a representative from the Labors International Union of North American Municipal, County and State Employees Union Local 1099, will be

established and convened at least one (1) time per year or more if practicable to review alternative insurance coverage and plans and make recommendations to the Employer. As part of this process, the representatives shall have access to all non-confidential information. The Employer shall have a senior employee as a representative on the committee and the Employer will require the city insurance representative to actively participate with the committee.

The Committee will analyze cost containment measures including, but not limited to, deductibles, co-pays, out-of-pocket maximums, prescription drug coverage and possible changes in providers. All City employees are to share in any cost reductions achieved by the Committee.

The contribution percentages shall not be applied retroactively.

The economic environment in which the City operates is highly turbulent and ambiguous. The Union has readily agreed to accept this characterization. It appears in the near future that revenue sources will trend downwards as expenditures continue to increase. Increased fees and other cost saving measures will more than likely be implemented to offset any future shortfall. Within this context, the City's wage proposal seems reasonable and diligent.

Compatibility also served as an important determinant in the wage and insurance recommendations. Negotiated outcomes by internal comparable bargaining units are given a great deal of credence in any analysis because they offer the best comparisons. All are impacted by identical market conditions and constraints. Deviations from established patterns can take place, but certain unique situations must be supported by the record.

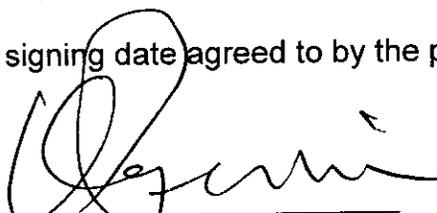
Here, for better or worse, the Firefighter and Dispatcher bargaining units dealing with wages and insurance have established a bargaining pattern. Nothing in the record supports the deviation proposed by the Union.

The health insurance recommendation is also reasonable based on the existing circumstances. Virtually all health insurance plans in the public and private sectors contain an employee contribution component. The Union's own comparables support this fact. The Fact Finder, however, does recognize that moving from nothing to paying a share of the premium may be difficult to accept, and thus, the progressive nature of the recommendation.

The Union failed to rebut a critical feature of the City's presentation. The City agreed that the contribution percentages may be high when compared to other municipalities' negotiated outcomes. Health insurance benefit components in the existing plan are more employee friendly. None of this was rebutted by the Union.

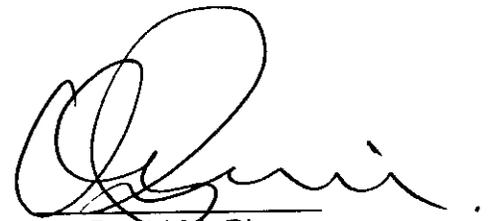
The Union failed to rebut the committee process proposed by the City. It was recommended for inclusion since it was agreed to by the other bargaining units. Also, this mechanism may control or reduce costs causing a decrease in contribution percentage.

The Fact Finder does not recommend the retroactive application of this recommendation. Upcoming negotiation with other bargaining units, with their ambiguous effective and resultant implementation dates, require the implementation date of the disputed health insurance recommendation per the signing date agreed to by the parties.



Chagrin Falls, Ohio  
June 1, 2010

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Dr. David M. Pincus  
Fact-Finder

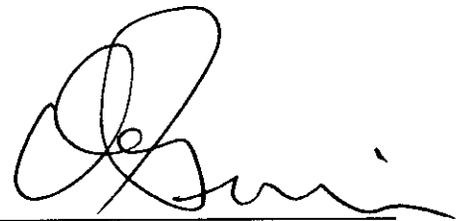
Certificate Of Service

This is to certify that a copy of the foregoing was mailed this 1<sup>st</sup> day of June, 2010 and Overnight Express Mailed to the parties listed below. A copy was also sent by regular U.S. Mail to J. Russell Keith, General Council and Assistant Executive Director. SERB at 65 East State Street, 12<sup>th</sup> Floor, Columbus, OH 43215-4213.

Marc J. Bloch, Esq.  
Walter and Haverfield  
1301 East Ninth Street, Suite 3500  
Cleveland, Ohio 44114-184

-And-

Basil W. Mangano, Esq.  
2245 Warrensville Center Rd., Suite 213  
Cleveland, Ohio 44118

A handwritten signature in black ink, appearing to read 'D. Pincus', written over a horizontal line.

Dr. David M. Pincus  
Fact-Finder

Dr. David M. Pincus  
Fact Finder  
15054 Hemlock Point Road  
Chagrin Falls, OH 44022

June 1, 2010

Marc J. Bloch, Esq.  
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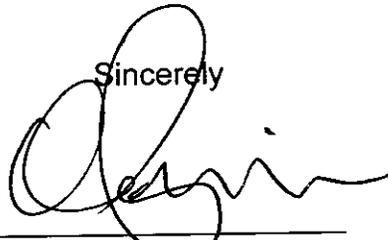
Basil W. Mangano, Esq.  
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Cleveland, Ohio 44118

Re: Municipal Foremen and Laborers' Union Local 1099 and the City of Berea  
SERB Case No.: 09-MED-09-0838

Dear Marc and Bill:

Enclosed please find the Report and Recommendation dealing with the above captioned matter. I have also enclosed a Fact-Finder's Invoice for services rendered.

Sincerely

A handwritten signature in black ink, appearing to read 'D. Pincus', written over a horizontal line.

Dr. David M. Pincus  
Fact-Finder