

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:	:	
	:	
The Fraternal Order of Police	:	09-MED-09-0955
Lodge No. 25,	:	
	:	FACT FINDING REPORT
and	:	FINDINGS AND RECOMMENDATIONS
	:	
City of Lakewood	:	September 3, 2010
	:	

APPEARANCES

For the Union:

Robert Phillips, Attorney
Jeff Robinson
Gary Sprague, Lieutenant
William R. McCarthy
Mary Schultz, Consultant
Steve Spaetzel
Matt Pietch

For the City:

Jon Dileno, Attorney
Timothy J. Malley, Police Chief
Nora L. Hurley, Law Director
Jennifer Pae, Finance Director
Jean Yousefi, Director of Human Resources
Keith Shuster, Assistant Finance Director

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Fact Finder
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I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on June 2, 2010, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period as provided under Ohio Administrative Code Rule 4117-9-05(G). They also agreed to extend the Fact Finder's deadline until September 3, 2010. The parties are the Fraternal Order of Police, Lodge 25 (Union) and the City of Lakewood (Employer or City). The Union represents police officers in western Cuyahoga County employed by municipalities, state, and federal agencies. The City is a suburb of Cleveland, on its immediate west side along Lake Erie, 5.6 square miles in area. With a population of over 50,000 (2000 Census), it is the third largest city in Cuyahoga County and in the top fifteen in Ohio. While primarily a residential suburb, the City also is home to many small businesses.

There are two (2) bargaining units at issue. They comprise approximately ninety (90) patrol officers, sergeants, lieutenants, and captains. The parties have had a collective bargaining relationship since 1984, just prior to the enactment of Ohio's public sector collective bargaining law. The parties met for nine (9) months and approximately eight (8) negotiation sessions. The parties were able to reach agreement on many issues, but could not resolve the major areas of wages, health care, and bonuses.

II. THE HEARING

The fact-finding hearing was held on Tuesday, August 10, 2010 at Lakewood City Hall, 12650 Detroit Avenue, Lakewood. Each party provided a pre-hearing statement. The hearing began at 10:00 a.m and adjourned at approximately 4:00 p.m. The Fact Finder attempted mediation of the issues without success and the matter was then heard on the

record. The parties introduced evidence and presented their positions regarding the issues at impasse. The parties jointly introduced the following exhibit into evidence:

1. Agreement between the City of Lakewood and Western Cuyahoga Lodge No. 25, Fraternal Order of Police, Lakewood Division.

Additionally, the parties introduced the following exhibits into evidence:

Union Exhibits

1. Agreement.
2. First Package Proposal of the City of Lakewood to the Fraternal Order of Police Lodge No. 25.
- 3-A. Tentative agreements dated July 23, 2010, including correspondence from City attorney dated August 4, 2010.
- 3-B. Email correspondence from FOP attorney to City Attorney dated August 5, 2010.
- 3-C. Proposal of the City of Lakewood to Fraternal Order of Police Lodge No. 25 dated July 23, 2010 regarding Article 31.
4. Sargent & Associates memorandum to FOP Lodge No. 25 members regarding City's financial condition dated August 10, 2010.
5. Fact Finder Report of Susan Grody Ruben issued June 13, 2010.
6. SERB Benchmark Report dated August 4, 2010.
7. Contract comparisons for ten (10) northeast Ohio communities, including Lakewood.
- 8-A. O.R.C. §109.801 Annual Firearms Requalification Program.
- 8-B. O.R.C. §109.801 Continuing Professional Training for Peace Officers and Troopers.
9. Various newspaper articles.

Employer Exhibits

1. General Fund Revenues v. Expenditures with Fund Balance 200-2009

Actual & 2010 Budgeted.

2. November 15, 2007 memo from Jennifer Pae, Finance Director to the Mayor, Administration, Council, and Citizens of Lakewood, Ohio.
3. City of Lakewood Phase 1 Performance Audit.
4. February 5th City of Lakewood Budget Hearing Agenda.
5. 2008 City of Lakewood, Ohio Budget Decisions as of March 31, 2008.
6. 2008 City of Lakewood, Ohio Budget Decisions as of July 31, 2008.
7. 2008-2009 Involuntary Terminations.
8. City of Lakewood General Fund Receipts and Expenses as of July 31, 2010.
9. City of Lakewood 2010 Estimate of Expenses Submitted November 11, 2009.
10. Report of Fact Finder Susan Grody Ruben.
11. Agreement between the City of Lakewood and Lakewood Paramedic Association January 1, 2007 - December 31, 2009.
12. Agreement between the City of Lakewood and Local Union 1043 and Ohio Council 8 American Federation of State, County and Municipal Employees, AFL-CIO, Administrative Employees Chapter January 1, 2008 through December 31, 2009.
13. Agreement between the City of Lakewood and Local Union 1043 and Ohio Council 8 American Federation of State, County and Municipal Employees, AFL-CIO, Administrative Employees Chapter January 1, 2010 through December 31, 2012.
14. Agreement between the City of Lakewood and Local Union 1043 and Ohio Council 8 American Federation of State, County and Municipal Employees, AFL-CIO, January 1, 2010 through December 31, 2012.
15. Agreement between the City of Lakewood and Lakewood Paramedic Association January 1, 2010 - December 31, 2012.
16. SERB 2008-09 17th Annual Report on the Cost of Health Insurance in Ohio's Public Sector.

17. Employee Sacrifices.
18. Paid Union Leave.
19. Perfect Attendance.
20. Patrol Officers Receiving Special-Assignment Premiums.
21. Cost of 1% vs. 2% Increases in 2010.
22. June 16, 2010 newspaper article "Brooklyn approves new contract with police union."
23. May 13, 2010 newspaper article "Pepper Pike lays off 5 police officers."
24. Report of Fact Finder Dennis Minni
25. December 3, 2009 newspaper article "Shaker Heights and police union agree to 3-year contract."
26. Emails re information requests by Mary Schultz.
27. Sargent & Associates April 14, 2009 report re Lorain Police and Fire Depts.
28. Local Governments currently in fiscal emergency.
29. Newspaper articles re city of Lorain.
30. Newspaper articles re Lorain County.
31. Sargent & Associates December 4, 2009 report re Elyria Police Dept.
32. Newspaper article re city of Elyria.
33. City of Lakewood Department of Finance Response to August 10, 2010 Financial Records review of the City of Lakewood and FOP Position Statement.
34. Ohio's Fiscal Crisis.

The issues remaining at impasse for the fact-finding included:

1. Wages.

2. Health Care.
3. Proficiency Pay.
4. Perfect Attendance.
5. FOP Meetings.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (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;
- (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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (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.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Introduction

Like many public employers in Ohio recently, the current recession is causing Lakewood to experience financial difficulties. The Union does not dispute the financial difficulties, but believes the City can afford more than it offers. In 2000, the City had a population of over 50,000 and employed more than 500. Its revenues and expenditures were almost equal and it had a fund balance of \$5.5 million. By 2002, the balance was over \$6.3 million. Beginning in 2003, expenditures began to exceed revenues and the fund balance dropped to \$3.8 million. By 2007, it was down to \$343,788. The City negotiated with its unions in 2007. While most bargaining units accepted some sort of concessions, including wage freezes and a lesser health insurance plan, the police officers received increases each year and the firefighters bargained increases in 2008 and 2009. Both units continued their health insurance. The City's non-union employees took the worst hit.

A new mayor was elected in November 2007 and the City faced a \$4 million deficit for 2008. According to Finance Director Jennifer Pae, this was mainly due from the increase in health care costs and the pay increases negotiated with the police officers and firefighters. A number of steps were taken. Approximately 80 part and full time employees were laid off and services were cut. For example, the City closed its Health Department, since some of the services duplicated Cuyahoga County services, reduced daily minimum staffing of firefighters and paramedics from 24 to 20, cut firefighter overtime hours, left unfilled a number of vacancies, abolished some positions, relinquished operation of its ice rink, and reduced staffing in its Department of Aging. All told, about 190 positions were eliminated in 2008. During this time, several additional full and part time police officers

were added.

As noted above, the City was able to implement changes or negotiate concessions from most of its other units. For example, non-union employees had wages frozen from 2008-10 and their longevity benefits and perfect attendance bonuses eliminated in 2008. In May 2008, they were transferred from a 100% insurance plan to a 90/10 plan with increases in out-of-pocket maximums, deductibles, and co-payments. The paramedics unit accepted wages freezes in 2007 and 2008 and, in September 2008, converted to the same 90/10 plan as the non-union employees. AFSCME Local 1043, which represents clerical and field employees, accepted a freeze in 2008 and conversion to the 90/10 insurance plan at the end of 2009.

At the end of 2008, the City had a balanced budget and fund balance increase of \$600,000. The City started a reserve balance, beginning with \$125,000. According to Pae, the reserve balance was set up to pay for the known costs of employees who would be retiring in 2010 and 2011. Previously, when an employee retired, the City would pay for it by not filling the position for some time. However, by the end of 2008, the City had eliminated so many positions that it could not leave a position vacated by a retiring employee unfilled. Therefore, it needed to set aside money for these future costs. The City's 2009 unaudited budget indicates a surplus of approximately \$1.5 million. Much of this was added to the reserve balance, which currently stands at \$1.15 million. Overall, the City cut \$3 million in expenditures from 2007 to 2010. Pae testified that these were necessary cuts.

According to Pae, the City knew that tax revenues would fall for 2010. Cuyahoga County informed Lakewood that there would be no property reevaluations for 2009, which

would typically increase the City's revenues. Instead, the County told it to expect a 6% reduction in property tax revenues. The City now estimates revenues to fall by \$2 million in 2010 and a budget shortfall of \$1.4 million, although it had budgeted expenditures and revenues to be about equal. Pae testified that revenues through July 31, 2010 are about \$850,000 less than 2009 and \$2 million less than 2008. Additionally, she originally estimated the 2010 fund balance to be approximately \$2.5 million. Although she could not give a specific number, she testified she knew it will be less than that amount. Additionally, over the next three (3) years, revenues appear to be flat or declining. According to Pae, the cost of the Union's proposals over three (3) years would be over \$1.5 million dollars, which would eliminate the fund balance. Pae testified that the Government Finance Officer's Association recommends that governments maintain an unrestricted fund balance of at least two (2) months of regular general fund operating expenditures. It costs the City approximately \$98,300 each day to operate. Therefore, the City needs a balance of approximately \$5.9 million to operate for two (2) months (sixty (60) days). The current balance is far short and the Union's proposal would deplete what balance the City has.

In addition to the police officers, the City has negotiated with its other bargaining units in 2010. The AFSCME unit consisting of administrative and clerical employees and the paramedics unit negotiated three (3) year agreements with increases of 0%, 1%, and 2% for 2010, 2011, and 2012, respectively. The AFSCME Public Works unit accepted the 90/10 insurance plan and agreed to the same wage package. The firefighters went to fact finding. The fact finder recommended increase of 0%, 1%, and 2% as well as the City's health insurance plan.

The Union utilized a forensic accounting consultant, Mary Schultz, to review the

City's finances. Schultz testified that the City had funds from which it could pay the increases sought by the Union. According to Schultz, the financial reports provided by the City show varying amounts in its funds, when the amounts should agree. Simply put, she could not determine exactly how much money the City had available. However, it had enough funds to pay increases to the police officers. Schultz testified that roads and safety forces are more essential services than municipal pools or departments of aging and the City could use funds slated for other purposes to pay the increases, though she did not analyze whether the City needs to repair streets or do other work. Additionally, City records showed a pooled cash fund balance of \$17 million. While Schultz was not exactly certain what these funds were, they could be used. She estimated that a 1% increase would cost the City about \$91,000, that she was comfortable with the City's figure of a \$1.4 million 2009 fund balance, and concluded that the City had approximately \$4.8 million available or that could be shifted from other purposes to pay the Union's proposals. This included the \$1.15 million reserve that the City set aside to fund future retirements.

Lieutenant Gary Sprague testified that the City has one of the lowest tax rates in the area. According to Sprague, the Union has asked the City to try to pass a tax increase or a safety forces levy to raise revenue, but the City has refused. The current mayor ran on a platform of increasing the number of police officers, so it is disingenuous to use no layoffs and an increase in full and part time police officers as justification for the City's proposals. Sprague further testified that there are reasons for the Union's proposals. For example, Union leave is used for meetings that take place in the City. Many Union committee members work the night shift and would have to work all night and then meet during the day. Day shift officers would be paid, but night shift officers would not. The

Union leave provision provides pay for the night shift. Also, from 1999-2008, the wages of the bargaining unit has increased only 2% over inflation. Sprague testified that the City's proposals include a 100% increase in employee premiums toward health care and other costs that would more than offset the increases it proposes. Finally, the perfect attendance bonus has given him incentive to report to work when he was not feeling well and believes others do as well. According to Sprague, this benefits the City. Meanwhile, firefighters get twenty-four (24) hours of sick leave with no penalty.

In rebuttal, Pae testified that Schultz's conclusions were incorrect and the funds Schultz concluded were available were not. Keith Shuster, the Assistant Finance Director, testified that the pooled cash fund shown on City financial records is an offset to all other cash fund balances and is an accumulation of bank accounts and investments.

In the face of its financial difficulties, the City has done what good government should – it has cut back. It cut expenditures by approximately \$3 million from 2007 to 2010. (City Ex. 1). It contracted out certain services, consolidated various departments, and eliminated almost 190 positions. (City Exs. 5-7). It froze the wages of non-union employees and cut certain bonuses, negotiated concessions with various bargaining units, and implemented a lesser, cheaper health insurance plan. (City Ex. 17). To its credit, the City did not go into a fiscal emergency or even fiscal watch. (City Ex. 28). The Union does not dispute that the City is having difficulty, but argues it can pay the police officers more than the City proposes. The City counters that if its current financial position does not justify its proposals, then how bad must it be before it can request help from its employees. The Fact Finder should adopt the wage package that other units have accepted and the City now proposes.

Issues Resolved During the Hearing

Article 33, Duration

During the hearing, the parties agreed that the duration of the contract would be three (3) years.

Unresolved Issues

Issue: Article 9, Wages

City Position: The City proposes wage freezes in 2010 and 2011 and a 2% increase in 2012.

Union Position: The Union proposes increases of 2.5% effective January 1, 2010, 3% effective January 1, 2011, and 3% effective January 1, 2012.

Findings: The City has proved that it is experiencing financial difficulties. It has cut expenditures by \$3 million in the last several years. The immediate future does not appear any better, with revenues this year falling by approximately \$850,000 through July 31. The City expects 2010 revenue to be about \$2 million less than 2009, with a deficit of approximately \$1.4 million. Given that property values have fallen dramatically in Cuyahoga County over the last few years, property taxes are not expected to increase and the City has been told to expect a reduction of 6%.

Mary Schultz, the Union's expert witness, testified that the City does have money it can shift from other funds to pay the requested increases. However, Pae's testimony called into question Schultz's conclusions. Additionally, shifting funds around may cause the City to have a shortfall elsewhere, such as in road repair. Further, it is likely that paying

the Union's proposed increases would result in additional layoffs and cutbacks elsewhere, even to such essential services as road repair. While the Fact Finder agrees that safety forces are essential services, while other services such as pools are not, the City has already taken steps to cut back non-essential services. Forcing the City to pay the Union's proposed increases would essentially be robbing Peter to pay Paul. The Fact Finder cannot in good conscience do so.

However, the City proposes a two (2) year freeze while its other employee units will receive a 1% increase in 2011. The fact finder's recommendation to the firefighters unit also recommended 0%, 1%, and 2%. The City's position that the police officers have had increases over the last several years while others have not is without merit. It ignores that the firefighters also received increases the last few years.

Recommendation: The Fact Finder recommends the wage package agreed to by other employee units and recommended in the firefighter fact finding, that is, a wage freeze in 2010, 1% effective January 1, 2011, and 2% effective January 1, 2012.

Issue: Article 16, Health Insurance

City Position: The City proposes to include the police officers in its 90/10 plan effective immediately and the right to eliminate the 100% plan. Further, the City proposes monthly contributions of 10% for family coverage and 13% for single coverage with caps of \$125 per month for family and \$75 per month for single coverage. Employees would pay \$10 for generic prescriptions, \$20 for name brand prescriptions where no generic is available, and \$35 for name brand prescriptions where a generic is available.

Union Position: The Union offers to maintain the status quo for 2010, agrees to the

premium contribution increase to \$125 for family and \$75 for single coverage, without the language reference to 10% and 13%, and agrees to the prescription co-pay amounts. It rejects the rest of the City's proposal.

Findings: The City claims that other employee units have converted to the health insurance plan proposed and the fact finder for the firefighting unit has recommended its proposal. Further, the City's proposal is in line with average premium contributions being assessed in the public sector. The Union contends that the increases in health insurance will more than offset the increases the City has proposed. Additionally, since 2010 is more than half over, any change should be effective in 2011.

Health insurance costs continue to be an important factor in collective bargaining. Indeed, health insurance can often be more difficult to resolve than wages. Costs continue to rise at percentages greater than the inflation rate. It is no surprise that employers seek to have employees share a greater portion of the burden and employees seek to hold the line on any increases. This is particularly so when employees are faced with little or no wage increases. The increases in health insurance can more than offset wage increases.

The City has proved its financial problems and its need for cost savings. While the Fact Finder understands the unit's reluctance to begin premium contributions, employee contributions are an increasing reality for public employees. In the Fact Finder's experience, public employees pay an average of 10% toward health insurance. The City's proposal puts them in line with the average public employee and caps premiums. It also puts them into the same plan as other City employees, saving the City administrative time and costs it would expend to administer two (2) plans.

However, the Fact Finder concludes that the Union's point about starting the

changes effective January 1, 2011 has merit. The City will save money and the police units will have time to adjust their finances to pay for the increases and make any changes in doctors or other provisions, if necessary.

Recommendation: The Fact Finder recommends the City's 90/10 plan be adopted and the City be permitted to eliminate the 100% plan. Employees will contribute 10% and 13% toward premiums, capped at \$125 and \$75 for family and single coverage, respectively. Prescription co-pays shall be \$10 for generic prescriptions, \$20 for name brand prescriptions where no generic is available, and \$35 for name brand prescriptions where a generic is available. The changes are to become effective January 1, 2011.

Issue: Article 22, FOP Meetings

City Position: The City seeks to eliminate the provision of 200 hours per year for members of the FOP committee and elected officers to use to attend FOP functions such as conventions and educational meetings. Its proposal would leave only the language that the City shall reasonably authorize vacation leave, holidays, or use of accrued overtime for such functions.

Union Position: The Union proposes no change.

Findings: The City contends that this article is an excess that can no longer be afforded. Union representatives can attend negotiations, process grievances, and attend police funerals on City time. This provision allows an additional 200 hours that can be banked if not used. The bank is currently 1120 hours. Given the City's current finances, it can no longer afford this provision.

The Union counters that a bank of 1120 hours proves the Union has been

reasonable in its use of time. Sprague testified that the 200 hours is used for meetings in Lakewood. Since many committee members work the night shift, this provision was negotiated so those individuals could attend meetings and be paid, as would those on the day shift.

The City's argument is premised on cost alone. It proved no abuse of the leave provision. Indeed, the Fact Finder agrees with the Union that the bank of hours indicates the Union has been judicious in its use of such leave. The City is getting relief in other areas, so eliminating this provision does not appear necessary.

Recommendation: No change in Article 22.

Issue: Article 24, Training

Union Position: Increase the stipend for proficiency in firearms by \$500 to \$1,750 in 2010, keep the stipend at \$1,750 for 2011, and increase it again by \$250 to \$2,000 in 2010.

City Position: The City proposes no change in the stipend.

Findings: The Union submits that the wage freeze and small increases, along with the changes in health care, will cost the employees money. Increasing the proficiency stipend is a way to provide employees with an increase to offset any costs. The City replies that its financial condition does not allow for the increases.

This is another simply economic matter. With a bargaining unit of approximately 90, an increase of \$500 will cost the \$45,000 in 2010, another \$45,000 in 2011, and \$67,500 in 2012 (\$45,000 plus \$250 x 90 = \$67,500). The total would be \$157,000 for the duration of the contract. While the Fact Finder empathizes with the Union's position, the City has established that its financial condition necessitates relief. Recommending the increased

stipend would be counterproductive and could result in other cost cuts.

Recommendation: No increase in the stipend.

Issue: Article 31, Perfect Attendance Bonus

City Position: Eliminate the bonus for employees hired after August 1, 2010.

Union Position: Maintain the status quo.

Findings: The City eliminated this bonus for all non-union employees in 2008. It has negotiated with its remaining unions to eliminate this bonus for new hires, except for the FOP and Ohio Patrolmen's Benevolent Association (dispatchers and corrections officers). In 2009, the City paid out approximately \$115,000 to this unit. It does not seek to eliminate the bonus entirely, only for new hires.

The Union responds that there is a benefit to this provision. It gives incentive to employees to report to work, saving the City other costs such as overtime. It points out that the firefighters get 24 hours of sick leave each with no penalty. Finally, the City's proposal would create a two-tier system with its inevitable divisions among employees and affect on morale. This provision was obtained during the give and take of negotiations and the Union obtained it only through conceding other matters.

The Fact Finder acknowledges that the bonus was negotiated as the result of the Union giving up something else. However, the current fiscal situation makes this argument less persuasive. The City's proposal does not eliminate the bonus for current employees. While there may be some tension for any new hires, that remains to be seen. It is not the equivalent of creating a two-tier wage system. Additionally, time off comparisons between firefighting units and police officers are always problematic. Scheduling is much different.

That the City's firefighters get 24 hours of sick leave with no penalty is not persuasive enough to reject the City's proposal.

Recommendation: Eliminate the perfect attendance bonus for employees hired after August 1, 2010.

Dated: September 3, 2010

Daniel G. Zeiser
Fact Finder