

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD 2010 NOV 15 P 1:30

CITY OF WILLOWICK : CASE NOS. 2009-MED-09-0983
: 2009-MED-09-0984
: EMPLOYER :
and :
FRATERNAL ORDER OF POLICE :
Lodge No. 116 :
: UNION :

REPORT AND RECOMMENDATIONS OF THE FACT FINDER
November 10, 2010

FACT FINDER
I. BERNARD TROMBETTA
6590 Creekside Trail
Solon, Ohio 44139
(440) 248-4845

I. DATES AND PLACE OF HEARING

This hearing was conducted on September 30, 2010 at the Willowick City Hall in Willowick, Ohio.

II. PARTIES TO THE HEARING

The employees are represented by Lodge No. 116 of the Fraternal Order of Police. Hereafter, the employee's representative may be referred to as the "FOP" or the "Union". The union represents the full-time police officers, sergeants and lieutenants. The employer is the City of Willowick. Hereafter, it will be referred to herein as the "City" or the "Employer".

III. APPEARANCES

The following persons appeared on behalf of the respective party as noted:

For The Union

Robert Phillips, Esq.	Attorney for the Union
Daniel Hirz	President of the Union
Brian C. Turner	Union Representative
Mark Guerrieri	Union Representative

For the City

Tom Grabarczyk	Labor Consultant
Cheryl Benedict	Finance Director
Richard Bonde	Mayor
Michael T. Lazor	Chief

IV. WITNESSES

For the Union

Daniel Hirz
Mary Schultz

Patrolman and Union President
Financial Expert

For the Employer

Cheryl Benedict
Richard Bonde
Michael T. Lazor

Finance Director
Mayor
Chief

V. INTRODUCTION

This bargaining unit consists of 21 members, 17 full-time patrolmen in one unit and 4 sergeants and 1 lieutenant in the second unit. The two units were combined for purposes of contract negotiations and this fact finding hearing. The chief was excluded from the units pursuant to Section 4717.01 R.C.

This is a contract renewal. The current agreement expired on December 31, 2009.

The Employer is located in Lake County. It either abuts or is located close to Wickliffe, Willoughby, Eastlake and Mentor. The City has approximately 14,000 residents. The homes are well-kept single family, but aging. The area is essentially residential and has one large commercial strip mall with a sprinkling of condominiums and apartments. It has little industry.

The Employer's effective tax rate is among the highest in all of Lake County. Its general fund budget is close to \$8,000,000 and relies upon a number of sources or streams to raise its funds, among

them levies, investment income and income taxes.

Revenues are either continuing to decline or at best flat, primarily due to lower property values and lower state local government funding. Income tax collections are running about 4% under 2009 and investment income is projected to be \$270,000 less the average for the years 2005 through 2008. Local government funding is down by almost \$280,000 from 2008 levels. General fund carryover balances, usually carefully groomed by all municipal financial officers, have fallen by over \$1,200,000 in the past 3 years.

The parties held five negotiating sessions, but did not start to bargain until the present contract expired. They reached agreement on a number of important issues, but were unable to reach a final agreement in form to be submitted for approval of the unit. A fact finding hearing was scheduled for and conducted on September 30, 2010.

VI. EVIDENCE AND EXHIBITS

The Fact Finder is charged with considering all relevant and reliable information introduced by the parties in support of their respective positions in making his recommendations. Each party submitted numerous reports, charts, comparisons and analyses. The Union supported its position through both exhibits and the testimony of an expert witness. The Employer countered with its own exhibits and the testimony of its Finance Director.

There is no necessity in setting forth the various exhibits relied upon by the parties in presenting their case, suffice to say that all relevant evidence was considered in issuing these recommendations.

VII. FACTORS CONSIDERED

In accordance with Rule 4117-9-5(J), the Fact Finder, in addition to the various evidence and testimony of the parties and witnesses, considered the following:

- a. Past collectively bargained agreements between the parties;
- b. Comparison of unresolved issues with other public employees doing comparable work;
- c. Consideration of factors peculiar to the area and classification;
- d. The interest and the welfare of the public;
- e. Ability of the employer to finance and administer the issues proposed;
- f. Effect of the adjustments on the normal standard of public service;
- g. Lawful authority of the employer;
- h. Stipulations between the parties;
- i. Any other factors not listed above which are normally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement

procedures in the public service or in private employment.

VIII. MEDIATION

In accordance with Ohio law, the Fact Finder inquired into the amenability of the parties to narrow the issues between them. They were close to resolving many, but the resolution was presented as a package settlement. The parties agreed to mediation on the following issues which resulted in many issues being either withdrawn or resolved by agreement. Appropriate contractual language is also set forth on those issues in which a settlement was reached. Obviously, there is no need to set forth contractual language on the issues that were withdrawn since present language will be incorporated into the new agreement. Underlined words and phrases constitute changes and are to be incorporated into the new agreement.

The following issues were resolved as follows:

1. Art. 10; Seniority: Over the years a question on how many hours for service were to be credited in matters of seniority not covered by Civil Service. The following language, proposed by the City, was agreed to by the Union:

10.01 In all matters not governed by Civil Service where the City considers and evaluates two (2) or more Bargaining Unit members within a particular classification such as, but not limited to shift selection and vacation selection, said selection shall be

awarded on the basis of seniority (last date of hire as a full-time Willowick police officer) should all other factors in the evaluation process, including the needs of the City be considered equal.

Prior continuous service of a Part-time Police officer shall be credited upon appointment to a Full-time position on a prorated basis. Each hour or continuous service from the last date of hire in the active pay status shall be credited as one (1) service credit. 2080 hours of service credits shall equal one (1) year.

2. Art. 11; Wages: The following constitutes an amendment to the current language of this article. These changes are not reflective of wage increases which are handled separately under the Fact Finder's recommendations. The Union agreed to these City sponsored changes:

11.03 (The following new sentence shall be incorporated into the new agreement immediately after the wage schedule.)

Years shall be defined as an employee's uninterrupted length of continuous service in the active pay status with the City from the last date of hire as a full-time Police Officer or an adjusted for prior continuous part-time service credit.

11.06 Effective 1/1/01 employees shall be granted additional compensation based on years of service defined as an employees uninterrupted length of continuous service in the active pay status with the City from the last date of hire as a full time police officer or as adjusted for prior continuous part-time service credit. Such compensation shall be added to the employee's base hourly rate, pursuant to the following schedule:

[No changes in the rate of compensation were made at the mediation session and are presented as Issue No. 1 in the Fact Finding portion of this report. Current seniority credits shall be adopted in the new agreement.]

Such rates are in total and are not cumulative.

[The following is a new section to be added to the new agreement and was proposed by the City. The Union accepted the new paragraph]

11.08 Active Pay Status: As used in this Agreement, "active pay status" is defined as receiving wages from the City for work performed, compensatory time, paid administrative leave or paid vacation, personal, holidays, sick, funeral, injury leave and jury duty. An employee is not in the "active pay status" when on an unpaid leave, disciplinary suspension of ten (10) days or more or collecting unemployment compensation or loss of time benefits from the Bureau of Workers Compensation or receiving disability retirement benefits.

Art. 17; Uniform Allowance:

17.01 The fourth paragraph of Subsection 17.01 is hereby deleted.

17.03 The first paragraph of Subsection 17.03 shall remain intact in the new agreement.

The following is a new paragraph to be added at the end of Subsection 17.03:

The amount of allowance set out in section 1 of this article shall be reduced proportionately based on the number of hours an employee was not in the active pay status during the previous twelve month period.

Art. 22; VACATION:

22.01 Annual Vacation:

A. Each regular full-time Bargaining Unit member shall receive a vacation based upon the following schedule of years of service in the active pay status:

The second sentence of the paragraph following the vacation entitlement beginning with the words: "Employees will" is amended as follows: "Employees will be permitted to hold back scheduling of up to forty (40) hours of holiday time that may be scheduled in not less than one (1) hour increments before the end of the year.

The last two paragraphs of Section 22.01 are hereby deleted.

B. For purposes of determining the number of vacation days

to which each regular full-time Bargaining Unit member is entitled, years of service shall be defined as an employee's uninterrupted length of continuous service in the active pay status with the City from the last date of hire as a full-time Police Officer or as adjusted for prior continuous part-time service credit. Each member shall be entitled to one vacation for each twelve (12) months worked.

3. Art. 23; Holidays: The City proposed the following changes to this article in view of the definition of "Active Pay Status" appearing in Section 11.08.

23.01 Time Off For Holidays:

A. Each full-time Bargaining Unit member shall receive credit for eleven (11) legal holidays (88 hours) in each calendar year after being on the force full-time for thirty (30) days, provided the employee is in the active pay status on the scheduled work day prior and the scheduled work day after each designated City holiday as they fall. These holidays may be taken in accordance with the vacation time covered in Article 22.

The number of holidays an employee is entitled to annually will be reduced for each event an employee is not in the active pay status on the scheduled work day prior and the scheduled work day after each designated City holiday.

B. [The addition of the following as it appears on the second line immediately following the word "days": (24 hours). The following sentence is added as the last paragraph of this subsection.

The number of personal days an employee is entitled to annually will be reduced proportionately based on the number of hours the employee was not in the active pay status in the previous calendar year.

C. The words "full time" are added to the first line following the word "New" and words (8 hours) are added to the fourth line immediately following the word "day".

The following language is added as the last paragraph of this subsection:

The number of personal days an employee is entitled to annually will be reduced proportionately based on the number of hours the employee was not in the active pay status in the previous calendar

year.

The following proposals were submitted by the Union and were withdrawn from consideration during the mediation process.

1. Article 15; Jury Duty: Section 15.03: In which the Union sought jury pay at the regular rate for hours the employee would have normally worked, less jury duty pay received.

2. Article 16; Overtime: Section 16.01 In which the Union sought at least 2 hours hours of double time pay each time an employee is called in other than during at the beginning or end of any regularly scheduled shift. In addition the Union sought an amendment to Section 16.01(1) regarding working in an overtime capacity on any of the six days specified therein.

3. Article 18; Mileage: Section 18.01: The Union sought an increase in the mileage rate from the present \$.25 per mile to the IRS guidelines which is \$.58 ½ per mile.

4. Article 21; Time Allowed- The Union sought changes in the bereavement pay section by adding step relatives to permissible bereavement time-off pay, likely in response to the increasing number of second marriages which bring the addition of step relatives.

IX. FACT FINDING

The following issues were not resolved by mediation and are the subject of the fact finding process and the recommendation of the Fact Finder. They are:

ISSUE NO. 1 WAGES

UNION PROPOSAL: The Union proposed annual wage increases of 0%, 3% and 3%.

CITY PROPOSAL: The City countered with a wage increase of 0%, 1% and 2% in its original counterproposal and increased the second year to 1½% conditioned upon the acceptance of its health care proposals.

OVERVIEW AND DISCUSSION: The City defended its proposal relying upon falling revenues due in large part to declining property values, reduced state funding and flat income tax collections. While revenues are not precarious, this City like many others throughout this state, are having difficulty in giving wage increases and continuing to absorb increased operational and employment costs without going to the electorate to seek additional tax levies.

This City is an aging residential community with little new building. There is little room to promote new single or multi-family residential units, therefore income tax collections likely will not grow significantly nor will property tax collections. The new apartment/ condominium development abutting City hall has been placed on hold due to an inability to finance additional units and sell existing units. There is little new commercial development.

The police department is a veteran force. There appears to be little turnover in view of the seniority of many members who have reached the top level in salary steps. As of June 18, 2010, the City ranks 27th among the top 50 cities in this state in police officer's salaries, with only Willoughby having higher top wage level in Lake County. (Emp. Ex. 11) [This analysis does not include benefits which allow other neighboring police departments to exceed this City's total wage and benefit package]. This unit's members have a higher top end package than do the officers in Eastlake, Willoughby Hills, Painesville and Mentor On The Lake. (Emp. Ex. 11).

While the Union's expert opined that revenue levels have bottomed and are starting to increase and that the City could afford the Union demands by transferring monies between funds. The City opposed the transfers and argued that in many instances the transfers were neither possible nor legal. In weighing all of the evidence, there is little doubt that revenues are still flat and show little prospect of significantly improving to the extent to permit the City to comfortably provide increases for its police department and other employees without the prospect of layoffs. Obviously when speaking of safety forces, layoffs cannot endanger public safety.

Revenue levels for 2010 are approximately the same as in 2005. Investment income, once robust, is almost non-existent- due to the low interest rates.

The tax levies relied upon to fund the general fund are tied to property valuations. The past few years have seen real estate valuations tanking rather than increasing. This and increased foreclosures have resulted in lower tax collections. Income tax

collections are not significantly higher. State local funding has been reduced and there is great likelihood that additional cuts will be made in local funding, particularly with the state facing a huge budget deficit and a leadership sworn not to raise taxes. Federal government grants have all but dried up and are soon likely to be non-existent.

The City's Finance Director opined that it costs the City approximately \$113,000 per year in wages and benefits for each police officer in this unit, and this amount is expected to increase depending upon health care costs. If wage increases were to be given to this unit and to other union and non-union employees, the City would likely have to go to the residents for a new tax levy. Few levies, renewal and new, were passed by the electorate in the November election. This is an aging community with a significant number of retirees who are unlikely to vote to increase their real estate taxes and with the area engulfed in the depths of a recession and high unemployment, income tax collections will not rise significantly. In any event, this Fact Finder is unwilling to recommend a wage increase based upon the prospects of a reluctant electorate passing a new levy.

In arriving at the following recommendations, the Fact Finder wrestled with the argument that this contract offer may be regressive. The 0% increase in 2010 was offset by the minimal increase in the CPI. While impossible to forecast future CPI's, wage increases of 1½% and 2%, should be sufficient to offset the expected slow rate of increases in the CPI and increased health insurance costs [excluding increased user fees]. Based on the recent economic trends, the City's revised offer permits this unit to at least "tread water" with increases in basic living expenses fully or at least partially setoff by the wage increases. This is not a backward step for this unit.

If their wage structure was so low in comparison to other Lake County policemen, this Fact Finder would have no qualms in making a remedial recommendation to address the issue, but this is not the case. There are no wage inequities to address with this unit. The Union's demands for a 3% increase in each of the last 2 years are not unreasonable, but they are excessive under present economic conditions. Historically, annual wage increases have been a part of the American labor scene since at least the end of World War II. High wages and benefits have contributed to the flight of American jobs in the private sector. The public sector is not similarly troubled since it would be rather difficult to out-source police, fire and administrative jobs, but public employers can no longer rely upon an electorate to agree to raise taxes and benefits for public employees that many believe to be too well-paid.

The Fact Finder understands this recommendations will not result in an increase in the net worth of this unit, the economic facts demonstrate that consumer prices, while higher for the third quarter of 2010, are still .6% below the same period in 2008. (Cleveland Plain Dealer, Nov. 1, 2010). The wage recommendation will permit this unit to maintain present living standards and are likely to keep it within the top 50 and possibly still maintain its 27th place, statewide.

RECOMMENDATION: The Fact Finder recommends that a 0 % wage increase in 2010, a 1½% increase in calendar year 2011 and a 2% wage increase in 2012.

ISSUE NO. 2

ARTICLE 12- HEALTH INSURANCE

CITY PROPOSAL: The City proposed a number of changes to the current health insurance plan arguing that recent increases in costs have made it almost impossible to maintain current levels. It proposed a doubling of the prescription co-pays, and fees for the use of the emergency room, urgent care and physician visits, along with a deductible of \$200 single and \$400 family, but allowed for a maximum out of pocket of \$1,000/ \$2,000 for in-network and 70/30% co-insurance doubling of the deductible and out of pocket maximums for out of network use. These changes would be in addition to the 90/10 cost of insurance.

UNION PROPOSAL: The Union countered by urging the retention of the current plan at current levels and cost set forth a number of comparisons with the Lake County Self Funded Plan in which Eastlake, Kirtland and Wickliffe are participants. The Union also sought a limit on the amount that they would have to pay for coverage.

OVERVIEW AND DISCUSSION: The last 3 years have seen a rapid and general cost escalation for health care. This is not a Lake County or Ohio phenomena. The recent bi-election saw a plethora of campaign ads devoted to health care.

Employer paid health insurance coverage is in-grained into American labor relations, but neither public nor private sector employers have been able to slow, much less stop, the spiraling costs. Employers argue that they cannot continue to absorb the

increased costs and the employees arguing that such coverage is a part of their package. For a time, HBOs and PPOs were used to slow down the increasing costs, but these means are no longer significantly less expensive. As far as the employees are concerned, adopting anything less than a traditional plan is anathema. As far as public sector employers providing full health insurance at no or little cost to the employee is likely to come under the scrutiny of an increasingly restive electorate, many of whom are retired and who are faced with paying increasingly higher medical costs not covered by Medicare.

A few years ago, public employers recommended plans that would pass on a portion of the overall costs or the increase in costs to the employee. The percentages, usually 90/10, are no longer providing the cost limitations sought by the employer and the employees are being asked to assume a greater share.

An analysis by the City's representative succinctly sets forth the problems which both sides are facing in July next when the new health care contract comes due. The past four years (2005 to 2009) have seen a 20% increase in wage and hospitalization costs, from \$32.85 per hour to \$39.32 per hour. (Emp. Ex. 18). Health insurance costs alone have risen by 72% in that same time period. (City's Pre Hearing Statement, Page 4).

Costs for health insurance are likely to rise, the only unknown being the amount of the increase. As a hedge against increased costs, the City proposed increased co-pays or user fees to try to offset the expected increases, but still keep the 90/10 ratio on costs. The City opined that by instituting user fees, insurance carriers would be encouraged to competitively bid on this contract.

The changes sought by the City are reasonable and within the scope of sharing of health benefit costs on these sized contracts. These changes are not to take place until the new insurance contract is received. This leaves unanswered the question of what happens in the event the expected increases are not as great as the user fees requested by the City. The City offered that the ½% wage increase and the out-of-pocket maximums provide ceiling on the costs faced by the employees. The City has not received bids on the new health insurance contract and those bids are not likely to be received until May, 2011. The City is hopeful that the new contract will limit the expected increase in insurance costs. While the Fact Finder is hesitant about making a recommendation based upon unknown increased costs, the alternative is to recommend a re-opener clause for health insurance. The following recommendation provides a reasonable increase in members costs, but also limits out of pocket expenses

RECOMMENDATION: The Fact Finder recommends that Article 12-Health Insurance be as follows in the new contract:

- 12.01 Remain as in current contract
- 12.02 Effective July 1, 2011 the prescription plan limits may be modified by the employer from the current \$10.00/\$20.00/\$20.00 to \$10.00/ \$20.00/ \$40.00 plan with mail-in required for maintenance prescriptions at a two (2) month co-pay for a ninety (90) day supply.
- 12.03 The City will pay 90% of the accumulated total of the health, prescription, eye and dental care premiums based on the employees plan level eligibility. The employee shall pay 10%. Effective July 1, 2011, a four-tier plan level of eligibility will be established.

Effective July 1, 2011, plan design changes will include establishing the following:

- \$75 Emergency Room Co-pay;
- \$50 Urgent Care Co-pay;
- \$20 Doctor Visit Co-pay;

	In Network	Out of Network
Co-Insurance	90%/10%	70%/30%
Deductible	\$200/\$400	\$400/\$800
Out of Pocket -Maximums	\$1,000/\$2,000	\$2,000/\$4,000

- 12.04 The current language of the first paragraph is recommended.

[The following paragraph is new and is to be added to the new contract.]

In the event the City proposes plan level/ design changes at times other than during successor collective bargaining agreement negotiations, each member of the Committee shall have one (1) vote. Acceptance of any plan level/ design changes during the term of the collective bargaining agreement, shall require a majority vote of the total members of the committee.

- 12.05 Current language is recommended.

ISSUE NO. 3

UNIFORM ALLOWANCE

UNION POSITION: The Union proposed an increase of \$50 per year in each of the three years.

CITY POSITION: The City stood opposed to any increases in the uniform allowances.

OVERVIEW & DISCUSSION: A review of the various uniform allowances paid by neighboring cities discloses that the City's allowance does not match the highest paid allowance, but is comparable to the majority. [See Emp. Ex. 10].

An increase in this allowance will not constitute a major bump in the City's budgetary woes, but will help to offset increased uniform and medical expenses. Since the first year of the contract is almost over, this recommendation covers the remaining two years.

RECOMMENDATION: The Fact Finder recommends that the Uniform Allowance remain at \$975 for 2010, be increased to \$1,000 in 2011 and \$1,050 in 2012.

ITEM NO. 4

VACATIONS

UNION PROPOSAL: The Union sought to add a sixth week of vacation for those members with 20 or more years of service.

CITY PROPOSAL: The City opposed increasing vacation time.

OVERVIEW & DISCUSSION: Only 3 of 8 neighboring municipalities offer vacation time in excess of 5 weeks regardless of years of service and one of them, Mentor, requires 25 years of service. [See Emp. Ex. 10].

Benefit increases is one manner of avoiding the impact associated with across the board wage increases, particularly from a restive electorate. This requested benefit increase will not have immediate application to the entire unit since only 9 of 21 patrolmen, sergeants and detectives are eligible for the 6th week. [Emp. Ex. 13].

Nevertheless, the Fact Finder believes that an increase in this benefit will, in fact, have a salubrious effect on the force and will recommend the same.

RECOMMENDATION: The Fact Finder recommends that a 6th week of vacation time be added to the schedule contained in section 22.01 commencing January 1, 2011. The new section should adjust vacation time section beginning with 15 years of service as follows:

15 or more, but less than 20-	5 weeks (200 hours)
20 or more	6 weeks (240 hours)

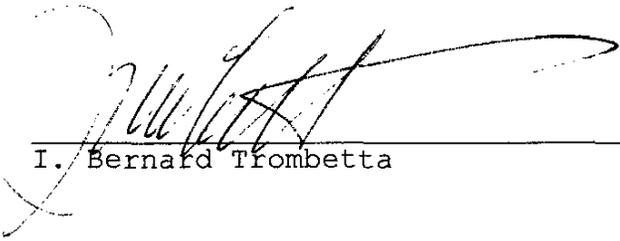
Respectfully submitted,



I. Bernard Trombetta
Fact Finder

SERVICE

A copy of the foregoing was served upon Robert Phillips, attorney for the Union and upon Tom Grabarczyk, labor consultant for the City by fax transmission. The fax transmission was sent on the 10th day of November 2010 at approximately 4 p.m. and was agreed to by the parties on September 30, 2010.



I. Bernard Trombetta

X

I. Bernard Trombetta

Attorney and Labor Arbitrator

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November 11, 2010

SERB

65 East State Street

Columbus, OH 43215

Re: Willowick & FOP, Lodge 116

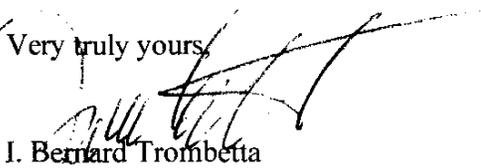
Case No. 09-SERB-09-0983 & 0984

Gentlemen:

Enclosed please find the Fact Finder's Report and Recommendations in the above matter.

Please note my change of address and phone number as reflected in the masthead.

Very truly yours,


I. Bernard Trombetta

IBT/rcl

enc.

STATE EMPLOYMENT
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2010 NOV 15 P 1:30