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STATE EMPLOYMENT
RELATIONS BOARD
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PURSUANT TO O.R.C. 4117.14(C)
UNDER THE AUSPICES OF THE
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN)	
)	
CITY OF LAKEWOOD)	
)	FACT FINDER'S REPORT
and)	
)	SERB CASE NO.
LAKEWOOD ASSOCIATION OF)	10-MED-02-0148
FIRE FIGHTERS, IAFF LOCAL 382)	

This Fact Finding arises pursuant to Ohio Revised Code Section 4117.14(C). The Parties, the City of Lakewood (“the City”) and the Lakewood Association of Fire Fighters, IAFF Local 382 (“the Union”), selected Susan Grody Ruben to serve as sole, impartial Fact Finder, whose Recommendations are issued below.

Hearing was held May 13, 2010 in Lakewood, Ohio. The Parties were represented by counsel and were afforded full opportunity for the presentation of positions and evidence. Pre-hearing submissions were received from both Parties. It was agreed to by the Parties that the Fact Finder’s Report would be issued in mid-June 2010.

APPEARANCES:

for the City:

**Jon Dileno, Esq., Zashin & Rich, 55 Public Square,
4th Floor, Cleveland, Ohio 44113 .**

for the Union:

**Thomas Hanculak, Esq., Diemert & Associates,
1360 SOM Center Road, Cleveland, Ohio 44124
and Jim Astorino, Northern Ohio Fire Fighters,
3100 E. 45th Street, Suite 214, Cleveland, Ohio
44127.**

FACT FINDER'S RECOMMENDATIONS

Statutory Criteria

In reaching Recommendations on the open issues, the Fact Finder has reviewed the parties' pre-hearing submissions, and the evidence and positions presented at the Fact Finding Hearing. The Fact Finder has analyzed this information in the context of the statutory criteria found in Ohio Revised Code Section 4117.14(G)(7):

- a) Past collectively bargained agreements ...
between the parties;**
- b) Comparison of the issues submitted to final
offer settlement relative to the employees in
the bargaining unit involved with those
issues related to other public and private
employees doing comparable work, giving
consideration to factors peculiar to the area
and classification involved;**
- c) 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;**
- d) The lawful authority of the public employer;**
- e) The stipulations of the parties; and**

- f) **Such other factors, not confined to those listed ... which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.**

Bargaining Unit

The bargaining unit consists of all classified members, excluding the Chief of Fire and the Executive Assistant Chief of the Division of Fire in the City of Lakewood. There are approximately 73 members in the unit.

Incorporated Sections

The Fact Finder hereby incorporates into her Report the Sections already agreed to by the Parties before the Fact Finding Hearing.

Unresolved Issues

1. **Section 3.01 Wages and Hours**

City's Proposal

The City proposes 0%, 0%, 2% on the basis the City, along with many other municipalities, is in financial crisis. Moreover, in 2008 and 2009, while many City employees were experiencing wage freezes and benefits cuts, this Union's members received over 7% in wage/bonus increases and enjoyed generous health insurance coverage. These internal comparables, coupled with the City's financial crisis, justify the City's proposal.

Union's Proposal

The Union proposes 2%, 3%, 3% on the basis the City proposal on health insurance represents a potential increase of \$4,300.00 out-of-pocket expenses for an employee, which represents a 5-7% decrease to an employee's base wage. Over the next three years, the City is looking to take back nearly \$13,000.00 from an employee while offering a wage increase of approximately \$2,000. That is not reasonable. The economy is recovering and the City General Fund balance is sufficient to cover the Union's proposal.

Fact Finder's Recommendation

The Fact Finder recommends 0%, 1%, 2% on the basis the City has demonstrated it is in financial crisis, has addressed the crisis by cutting \$4 million in spending (putting it at 2003 spending levels), and other City collective bargaining units have made similar sacrifices. That said, a modest wage increase in 2011, rather than the City's proposed 2nd year of a wage freeze, is reasonable.

2. Section 3.05 Bonuses¹

City's Proposal

The City proposes eliminating Section 3.05 – the \$500 annual HazMat payment -- on the basis a one-time hazardous materials certification is

¹ Both Parties' Pre-Hearing Statements proposed maintaining status quo on Section 3.04 – EMT and Paramedic bonuses, resulting in there being no need for the Fact Finder to make a recommendation on Section 3.04.

required of all Fire Fighters per State law, with no continuing education requirements. When the City opts to provide continuing HazMat education, it is provided by the City at no cost to employees and it is conducted while employees are on duty. Moreover, HazMat responses are rare, and are undertaken primarily by the three to four employees who belong to the regional HazMat team. The elimination of the HazMat bonus would equalize the annual compensation of the City's Fire Fighters/Paramedics with the City's patrol officers.

Union's Proposal

The Union proposes increasing the HazMat payment from \$500 to \$1250 to match the firearms proficiency payment in the Police contract. The Union prevailed in a 2009 "me-too" grievance arbitration between the Parties. There is no reasonable justification to delete the HazMat payment.

Fact Finder's Recommendation

The Fact Finder recommends keeping the HazMat payment at \$500 on the basis that even without a HazMat pay increase to \$1250, the Fire Fighters overall are compensated at a higher level than patrol officers.

Moreover, the City is in financial crisis, and an increase to \$1250 would cost approximately \$164,250 over the 3-year contract.² The June 2009 "me-too" grievance arbitration held the HazMat payment is an element of wages under the 2007-negotiated narrowed "me-too" clause that provided for renegotiation if Police, Public Works, or Paramedics received

² 73 Fire Fighters x \$750 x 3 years = \$164,250 .

“more economically beneficial wages and[or] medical benefits.”³ The award did not grant an increase in the HazMat payment to \$1250 – the level of the 2009 Police firearms proficiency payment – but rather ordered the Parties to negotiate the effect of the Police increased firearms proficiency payment. That mid-term negotiation went to fact finding during which a mediated settlement was reached of a \$1250 payment to Fire Fighters in 2009, with the understanding the contractual issue of HazMat pay going forward would wait for the instant negotiations.

3. Section 14.01(A) 14.01(B) Vacations

City’s Proposal

The City proposes status quo on the basis this Union’s 24-hour employees are on an even par with the City’s Paramedics, the City’s other 24-hour employees. Moreover, this Union’s 40-hour/week employees have the same accrual steps as the rest of the City’s 40-hour employees.

Union’s Proposal

The Union proposes to accelerate the vacation accrual schedule to match other City employee schedules. The Union also proposes to increase the vacation tour credit from 24 hours to 30 hours to match the recent credit enhancement provided to the Police.

³ That finding largely was based on the fact that pre-arbitration, the City agreed to adjust Acting Pay correlating to an adjustment in Acting Pay in the Police contract. This opened the door, according to that arbitrator, to finding the HazMat payment fell within the definition of “wages” in the narrowed “me-too” clause. This Arbitrator sees a distinction between considering Acting Pay a part of wages, as compared to the HazMat payment – i.e., Acting Pay attaches to the hourly rate of pay and thus is wages, and the HazMat payment is a one-time payment, making it an economic benefit not covered by the narrowed me-too clause.

Fact Finder's Recommendation

The Fact Finder recommends accelerating the vacation accrual schedule to match the majority of other City employees (everyone but the Paramedics). With the 2008 decreased minimum manning, slightly increasing vacation time off for Fire Fighters will have a minimal cost effect.

The Fact Finder recommends status quo on vacation credit on the basis the Fire Fighters' and Police schedules are not directly comparable. E.g., Fire Fighters have Kelly days, and 2 days off/1 day on. Thus it is not necessary to adjust the Fire Fighters' vacation credit to maintain parity with the Police.

4. Section 16 Medical Coverage and Insurance

City's Proposal

The City proposes the health insurance plans with employee premium contributions already in effect for three City unions and all non-union employees. The City's proposal is in line with the premium contributions being assessed, on average, in the public sector and far below those levied in the private sector.

Union's Proposal

The Union proposes a 10% monthly contribution for health care premiums for the current 100% plan, not to exceed \$62.50/\$150.00 per month. The prescription co-pay will increase from \$5/\$10/\$15 to

\$10/\$20/\$35 for the current 100% plan. The employees will continue to pay under the same formula for the 90/10 plan.

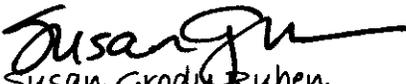
A Health Care Review Committee will be established, convened at least semi-annually to review alternative insurance coverage and make recommendations to the City. Committee members shall have access to all non-confidential information. The City will have a level-one employee as a representative on the Committee, and the City will require the City insurance representative to actively participate with the Committee.

The City's proposal is too extreme. It will result in a 5-7% reduction in employee wages.

Fact Finder's Recommendation

The Fact Finder recommends the City's health insurance proposal. While it will lead to greater costs for employees, it is in line with the trend in public sector health plans. The Fire Fighters have been fortunate to have had generous health coverage in the past; these are very lean times for families and municipalities, and both must make sacrifices. In this climate of shared sacrifices, the Fact Finder recommends the Health Care Review Committee proposed by the Union.

DATED: June 13, 2010


Susan Grody Ruben
Susan Grody Ruben, Esq.
Fact Finder