

STATE EMPLOYMENT
RELATIONS BOARD

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
October 17, 2010

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In the Matter of:)
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The City of Westlake)
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and)
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Ohio Patrolmen's Benevolent)
Association (Patrol))
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)

SERB Case No
10-MED-04-0580

APPEARANCES

For the Union:

Randall Weltman, Attorney for the OPBA
Dave Carney, OPBA Negotiating Committee
Andrew Fleck, OPBA Negotiating Committee
Marcel Sorgi, OPBA Negotiating Committee
Gerald Vogel, OPBA Negotiating Committee

For the City:

Gary Johnson, Attorney for the City of Westlake
Dennis Clough, Mayor of the City of Westlake

Fact Finder: Dennis M. Byrne

Background

This fact-finding involves the members of the Westlake Police Department (Patrol Division) represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union) and the City of Westlake (Employer). Prior to the Fact Finding Hearing, the parties engaged in a number of negotiating sessions, but they were unable to come to an agreement. The Fact Finder conducted a mediation session prior to the formal hearing, and the parties were able to make progress and close the gap between their positions on a number of issues. However, the only two issues that they reached a tentative agreement on were the Layoff and Wage Continuation Articles. Therefore, eight (8) issues remained on the table: 1) overtime, 2) workweek/scheduled hours, 3) wages, 4) longevity payments, 5) holidays, 6) health care, 7) sick leave bonus payments, and 8) miscellaneous provisions. The parties' major disagreements are over wages, health care, and workweek/scheduled hours (special unit work).

Subsequently, a Fact Finding Hearing was held at the Westlake City Building. The hearing was held on September 23, 2010. The mediation effort started at 10:00 A.M. and the formal hearing started at approximately 1:30 P.M. and concluded at 5:30 P.M.

The Ohio Public Employee Bargaining Statute sets forth in Rule 4117-9-05 the criteria the Fact Finder is to consider in making recommendations. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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 interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

Introduction:

The two main issues that separate the parties are the prospective wage increase and changes to the health insurance plan. The patrolmen believe that they deserve a significant raise when compared to other comparable departments. The City argues 1) that the patrolmen are well paid and 2) given the deteriorating state of the City's finances that a wage freeze in the first year of the prospective contract is warranted and that any wage increases in the second and third contract year should be moderate, i.e., less than 2% on average.

The second major issue relates to the health insurance plan. The City demanded two changes in the plan. First, the City wants the patrolmen to pay more for their health insurance; and second, the City believes that there must be changes in the overall plan design. The Employer contends that both of these changes are needed to control the rising health insurance costs paid by the City. The Union argued strenuously against any increase in the premium cost paid by its membership; but ultimately agreed that the cost to the patrolmen probably will have to increase. However, the Union believes that increasing the employees' premium payments does not make the provision of services more efficient. The Union argued that some changes in plan design are a much more reasonable way to try to limit the rising cost of insurance.

There are also a number of other issues on the table, and the most contentious of these issues is the special unit assignments. The Union strongly argued that the special

assignments were “plum assignments” and, as such, should be reserved for full-time employees. During the term of the last contract, the City assigned a part-time employee to work in the Detective Bureau and argued that such job assignments are an inherent management right. The City believes that it has the responsibility to direct the labor force and provide the best service to the citizens of Westlake in the most efficient way possible. Therefore, it rejects that Union’s demand that special duty assignments be reserved for full-time employees.

Among the factors that ORC 4117 lists that a neutral must consider when making a recommendation is whether the recommendation is reasonable when compared to other jurisdictions. In addition, a neutral is also required to determine if the public employer has the ability to fund the recommendation.

The Union argued that the City had no financial problems and that it could easily afford to meet the Union’s demands. In response to the Union’s testimony, the City pointed out that all of its major sources of revenue are generating less income than they generated in prior years. That is, the City argued that the recession that has plagued the entire nation has not bypassed Westlake and that its revenue streams are drying up. However, regardless of the overall trend in revenues, the City agrees that it is in good financial condition compared to many other jurisdictions throughout Ohio.

The Union also stated that its demands are reasonable when compared to other comparable jurisdictions. On the other hand, the City argues that its patrolmen are well paid compared to patrolmen in other jurisdictions. Therefore, while there is no real dispute over the City’s ability to pay, there is a major disagreement about whether the

Westlake patrolmen are underpaid when compared to other comparable departments.

This disagreement is based on the parties' differing definition of comparability.

Neutrals have discussed the use of comparables data since the passage of ORC 4117. In general, the trend has been to use a standard set of jurisdictions as a comparison group. That is, over time the parties have come to some understanding of which other jurisdictions are comparable, and during negotiations the list of other comparable jurisdictions is not at issue. That is not the case in Westlake. The Union argues that more affluent suburbs throughout the Northeast Ohio area are the real comparables, and it uses data from these jurisdictions when discussing its demands. The City on the other hand, uses jurisdictions that are contiguous to Westlake, the local labor market, when discussing comparability. This lack of consensus on which jurisdictions are comparable to Westlake is a major reason for the parties' disagreement on economic issues. The comparability issue will be discussed in the wage section of the report.

Ultimately, the issues between the parties are a reflection of the issues that divide labor and management throughout the nation and the state. The level of economic activity remains anemic, and revenues are declining. These facts make the City believe that it must cut back on expenditures and try to economize. The Union recognizes that the overall economic situation is grim, and it agrees that the City's finances have deteriorated over the last few years. However, the Union argues that Westlake is still in good financial condition and that considering all of the facts that the City can afford to fund what the Union believes are reasonable demands.

Issue: Article VI – Overtime

Union Position: The Union demands that the patrolmen be allowed to accumulate eighty (80) hours of compensatory time.

City Position: The City rejects the Union's demand.

Discussion: The City agreed that regardless of which jurisdictions are included in a comparables list, that list would show that the Westlake patrolmen cannot accumulate as many hours of comp time as patrolmen in other jurisdictions. However, the City argued that there are legitimate reasons for its position. First, the City stated that new accounting regulations mean that the City must carry funds on its books to pay for comp time and that this negatively affects its balance sheet, which may affect its credit rating. The City also argues that even though the parties might try to find a way for the officers to use comp time without causing an increase in overtime use within the Department, there was a nontrivial possibility that overtime would increase. In the same vein, the City contends that any increase in earned time off causes scheduling problems for the Department and lessens the flexibility of the Department to deploy its manpower in the most efficient way. Finally, the City testified that it pays for overtime when it is earned and that it would prefer to pay for overtime rather than schedule comp time.

The Union argued that the number of comp time hours earned by the patrolmen is substandard by any measure. The Union also stated that it understood the logic behind the City's position on the issue and that it is willing to agree to language that will minimize the possibility that comp time use will lead to an increase in overtime. In further defense of its demand, the Union also argued that the officers are always able to use more comp time because unforeseen events occur that often require an officer to miss

some work. This is especially true for officers with families and children. Because the use of comp time requires prior notification and approval from the Chief, the Union contends that the Department is able to plan for the officer's absence from work on days when he/she uses accrued comp time. The Union believes that unscheduled call-offs cause more staffing problems and overtime payments than the use of comp time. Finally, the Union argues that because comp time banks must be cashed out at the end of the year there is no accrued liability carried on the City's books from one year to the next.

The comparables from all other jurisdictions prove that the Westlake patrolmen earn less comp time than other departments. In addition, the Union has expressed willingness to craft language that minimizes any scheduling problems that comp time may cause the department. These considerations coupled with the fact that comp time must be cashed out at the end of the year convince the Fact Finder that the Union's position on this issue is meritorious. Therefore, the Fact Finder recommends that the comp time accrual rate be increased to eighty (80) hours.

Suggested Language: Article VI

Section 6.02 No member of the Police Department shall accumulate a total of more than eighty (80) overtime hours without the permission of the Chief of Police. The Chief of Police or his designated representative must approve all use of accumulated overtime hours.

Issue: Article XII – Work Week/Scheduled Hours

Union Position: The Union demand is that part-time employees shall not be permitted to work special duty assignments.

City Position: The City rejects the Union's demand.

Discussion: Factually, special assignments often pay more than the patrolmen's base wage, and the work schedules are often more convenient than a patrolman's regular schedule. This means that special assignments are very desirable duty to the patrolmen. Consequently, the Union maintains that all special duty part-time assignments should be reserved for full-time patrolmen. The City rejects this position and claims that the right to schedule is an inherent management right. Therefore, the City is adamantly against the Union's demand. The City in its Pre-Hearing statement claimed that this was "not a proper subject for bargaining." Therefore, the City believes that the Fact Finder should not issue a recommendation on this issue.

During the term of the expired contract, the City hired a part-time person to work in the Detective Bureau. The Union protested the hire; and the City, claiming that the issue was a management right, refused to appoint a full-time patrolman to the position. The Union filed an unfair labor practice (ULP) against the City. After SERB found 'probable cause' that a ULP existed, the parties settled the issue under an agreement whereby the part-time employee was removed from the detective's job, and the parties agreed to resolve the matter during negotiations.

During these negotiations the parties have been unable to come to an agreement. The Union claims that its membership has many individuals who can and have functioned as detectives and these patrolmen should have the detective assignment. The City argued that there are many extremely qualified individuals who have experience in large metropolitan police departments who are willing to work part time and that these individuals are uniquely qualified to perform the duties in question. As a case in point,

the City claimed that many retired Cleveland detectives were willing and able to work in Westlake. The City argues that these individuals have unique talents that the average Westlake patrolman does not possess.

However, the City's main point with regard to this issue is that it has the right to hire and assign members of the labor force to positions within the Department as it sees fit. The City claims that this is a management right protected by ORC 4117. During the discussions on this issue, the City did not indicate any willingness to compromise on its core position that the issue was covered by the Management Rights clause in the parties' contract.

The question is whether the Westlake patrolmen have a right to any job assignment within the Department. If the contract gave the patrolmen the right of first refusal to all positions, then all current full-time officers would have the right to a position; and only if none of them wanted the job could a part-time employee be hired. However, the Fact Finder could not find any contract language that gives the full-time officers that right. Therefore, the current impasse is over the question of whether the full-time officers *should* (emphasis added) have a right of first refusal to all positions within the department. The Fact Finder believes that the answer to that question is "Maybe."

There are numerous reasons why a full-time employee should be given preference when filling positions, e.g. morale, reward for long and loyal service, etc. In addition, a full-time employee is usually more invested in his/her job than a part-time employee. In this case, the record shows that the full-time employees were incensed when a part-timer was hired as a detective. This had to affect the morale of the officers and strain working relationships within the Department and the City.

However, the City has a legitimate point when it claims that management rights are involved. The City should have the right to hire a person with special skills to perform certain tasks. For example: assume there has been a murder or a series of violent crimes within the City's boundaries. An ex-Cleveland homicide detective has probably been involved in many more murder investigations than any Westlake police officer. This means that the Cleveland detective is more qualified to investigate certain crimes than a Westlake patrolman on a special assignment. However, the Westlake officers may be as qualified as the Cleveland officers to investigate other kinds of crimes, e.g., property crime or thefts.

Therefore, the Fact Finder believes that the parties should meet and discuss the situation when the City is attempting to fill a special assignment with a part-time officer. The Union should have the opportunity to make a case that a current full-time officer can perform as well as a part-time employee. If the City chooses to hire the part-time person, at a minimum the Union will be aware of the reasons for the hire.

Ultimately, the welfare of the citizens of Westlake is the main reason for the City providing police services. If the City reasonably believes that the experience of a part-time employee is a deciding factor in determining who will fill a position, that judgment should be able to withstand the Union's scrutiny. The Union may not like and/or agree with the City's hiring decision, but it should understand the rationale. Moreover, the Union may be able to persuade the City that a current full-time employee has the requisite skills and experience to successfully complete the special assignment if given the chance to discuss the issue.

Finding of Fact: Full-time patrolmen have a legitimate interest in having special assignments go to current members of the Department. On the other hand, the City has a legitimate interest in finding the best-qualified individuals to fill special assignments in order to best protect the interest of the citizens of Westlake.

Suggested Language: Part time employees shall not be permitted to work specialized assignments, including positions in the detective bureau, until the parties to this agreement Meet and Discuss the issue.

Issue: Article XV – Wages

Union Position: The Union demands wage increases of 1.75%, in year one, 2.75% in year two, and 3.0% in year three of the prospective contract. In addition, the Union demands that a firearms qualification bonus of \$675.00 be added to the contract.

City Position: The City offers a 0% increase in year one, a 1.0 % increase in year two, and a 1.5% increase in year three of the prospective contract. The City rejects the Union's demand for a firearms qualification bonus.

Discussion: The Union demand is for 7.5% over the life of the agreement and a \$675.00 firearms qualification payment. The City has offered 2.5% over the term of the agreement and no firearms qualification bonus. These are significant differences. The main reason for the parties' differing positions is a difference of opinion over the comparable jurisdictions. The Union's comparables show that the patrolmen are somewhat underpaid in comparison to comparable departments. On the other hand, the comparability data cited by the City shows that the patrolmen are well paid compared to other departments. Consequently, the comparables data must be examined.

It is noteworthy that after decades of negotiations, there is no overlap in the parties' lists of comparable jurisdictions. The Union selected affluent, elite jurisdictions throughout Cuyahoga and Lake Counties. The City selected surrounding, contiguous jurisdictions including Lakewood as its comparable jurisdictions.¹ The City's definition of comparability, i.e., the surrounding labor market, is a standard way to define comparability throughout Ohio. The inclusion of Lakewood is somewhat suspect because it does not abut Westlake and is more closely related to Cleveland than the suburban areas surrounding Cleveland. However, Lakewood has not completed negotiations for a new contract with its police officers and, consequently there is no data on 2010 - 2012 wage increments included in the City's exhibits.

The Union's comparables list is more problematic. The Union argues that Westlake is comparable to other affluent jurisdictions. However, some of the jurisdictions cited are probably not comparable in any meaningful sense. For example, the Union cites Willoughby as a comparable jurisdiction. But, according to the Union's data, Willoughby's population is thirty percent less than Westlake's. Moreover, Willoughby has a very low per capita income and is located in Lake County. But, it pays the highest wages and benefits of any police department cited by either side as a comparable. Consequently, it appears that Willoughby may not be comparable to any other jurisdiction; and without more information about Willoughby, the Fact Finder does not believe that Willoughby is comparable to Westlake. An examination of the Union's data leads the Fact Finder to conclude that Mayfield Village, Mentor, and Willowick are

¹ The Union presented Union Exhibit 4, a Fact Finding Report from the 2007 negotiations by Fact Finder Nels Nelson. Nelson discusses comparability on pages 6 and 7 on his report. The current Fact Finder incorporates that discussion in this report by reference.

probably not comparable to Westlake in any meaningful sense, except they are affluent. However it is true that Westlake is an affluent area, and the information provided by the Union is somewhat useful in determining wage and benefit levels in wealthy, suburban areas.

Without going into excruciating detail, the Fact Finder believes that the data taken as a whole prove two things. First, Westlake is affluent and can afford to fund a reasonable wage increase for the police officers. Second, the data also show that the Westlake patrolmen are paid marginally less than officers in affluent, comparable jurisdictions, but are reasonably paid when compared to other jurisdictions in the applicable labor market. The overall conclusion is that the patrolmen are neither overpaid nor underpaid compared to other jurisdictions.

The Fact Finder has also examined the City's financial records and agrees with the City that its revenues (general fund balance) have fallen over the past few years. This is a reflection of the overall economic malaise affecting the entire nation. Westlake is not immune to the recession that has not yet lessened its grip on Northeast Ohio. However, the national and state economic data show that a recovery has started and that recovery will ultimately work its way into Northeast Ohio.

In light of the above discussion the Fact Finder is recommending general wage increases totaling six (6.0%) over the life of the proposed contract. The exact breakdown is zero (0%) in the first year and three (3.0%) in the second and third years of the prospective agreement. Loading the recommended wage increase into the final two years of the agreement gives the City some relief in the first year of the agreement and gives the economic recovery some time to strengthen.

Given the state of the City's finances and in light of the uncertainty surrounding the level of economic activity, the Fact Finder is not recommending the inclusion of a firearms qualification bonus into the contract at this time.

Finding of Fact: Westlake has seen a decrease in its revenues over the past few years; however, the City can afford to increase the wages of the patrolmen over the life of the prospective contract.

Suggested Language: The wage scale in the expired contract shall be amended to show an increase in the patrolmen's wages of three (3.0%) in 2011 and three (3.0%) in 2012.

Issue: Article XVIII – Longevity

Union Position: The Union rejects the City's demand, i.e., the Union wants to maintain the status quo.

City Position: The City wants to eliminate longevity payments for all employees hired after January 1, 2012.

Discussion: The City argues that the Deferred Retirement Option Plan (DROP) negates the need for longevity payments. The system allows police officers to continue working after they could retire and bank up to fifty thousand (\$50,000.00) dollars per year for eight (8) years in a deferred annuity. The City argues that this annuity can replace the need for a longevity payment. The Union disagrees.

Longevity payments are usually seen as a wage supplement that ties an employee to his/her employer. The reason for longevity pay is that more senior employees should have greater job skills and be more efficient in the performance of their jobs. It is a wage supplement that increases take home pay. It is true that longevity pay leads to greater W-

2 income and that the employer has to pay roll-up costs on an employee's W-2 earnings, but longevity is not tied to retirement per se. In addition, the Fact Finder does not find that the DROP program and longevity are substitute payments to the employee.

Therefore, in light of the Union's opposition to the demand, the Fact Finder is not recommending inclusion of the City's language into the contract.

Finding of Fact: The Employer did not prove that longevity payments should be deleted from the contract.

Suggested Language: None

Issue: Article XIX – Holidays

Union Position: The Union demands that one more holiday, Veteran's Day, be added to the list of holidays found in article 19.

City Position: The City rejects the Union's demand.

Discussion: The Union contends that the comparables show that the Westlake patrolmen's contract is deficient in the number of holidays and paid time off days earned by the patrolmen. According to the Union's data, other comparably situated officers receive over ten (10) paid holidays and over twelve (12) paid days off. In Westlake the patrolmen receive eight (8) paid holidays and approximately eleven (11) paid days off. The Union claims that this information shows that there is a need for more paid time off. In addition, the Union argues that Veteran's day is a national holiday and that a number of the patrolmen are veterans and the day has special meaning to officers who have served in the Armed Forces during the last decade.

The City's comparables also show that the Westlake officers have fewer paid holidays than other officers in the surrounding area. The same data show that the patrolmen have less personal days than most other surrounding jurisdictions. The data on personal days is somewhat skewed because the Bay Village and Rocky River contracts show that the patrolmen in those cities have no personal days off. If those jurisdictions are deleted from the analysis, then the average number of personal days off in the City's comparables is three and two thirds days. Therefore, these data also show that in terms of personal days off, the Westlake patrolmen earn less time off than other comparable jurisdictions.²

Finding of Fact: The Union proved that the Westlake patrolmen earn less paid time off (holidays and personal days) compared to other comparable jurisdictions.

Suggested Language: Veterans' day shall be added to the list of paid holidays in Article XIX.

Issue: Article XXI – Health Benefits and Spending Plan

Union Position: The Union is recommending some changes to the health care plan design, but rejects the City's demand that it pay more for health insurance.

City Position: The City is also recommending some changes in the health care plan design and is demanding that the employees pay ten (10%) percent of the health care premium cost with no caps on the amount the employee pays.

² The Union's comparables list also shows that Beachwood, Solon, and University Heights patrolmen have no personal days off in their contracts. However, these three jurisdictions' patrolmen have an average of twelve (12) paid holidays.

Discussion: The parties came to agreement on most aspects of the plan design. The one area of remaining disagreement is level (iv) of the prescription plan. This portion of the plan concerns non-formulary drugs. The Union proposes that the employee pay \$30.00 for a non-formulary prescription. The City demands that the employee pay thirty (30%) percent of the cost of non-formulary prescriptions. The City contends that most drugs have either formulary or generic substitutes and that physicians do not have to prescribe non-formulary medications. The Union disagrees and argues that some unfortunate individuals with cancer, heart disease, etc., must take new expensive drugs and that there are no substitutes available.

The parties discussed the issue, and the City agreed that the Union made a cogent argument about new and/or very expensive medications. At the same time, the City argued that it had to have some incentives built into the contract to try to control the cost of the drug plan. The administrator of the health plan also stated that the City had worked with other employees who were faced with massive prescription costs and that it was always trying to find ways to lower the cost of prescriptions to the City and its employees.

The Fact Finder believes that both sides made good points in this discussion. Most drugs do have formulary or generic equivalents; however, some do not. At the same time the City does have a vested interest in controlling its health care expenditures. The Fact Finder also takes note of the fact that all other City employees pay thirty (30%) percent toward the cost of non-formulary medications. Therefore, the Fact Finder is recommending a middle position on this issue. The Fact Finder recommends that the employee pay thirty (30%) percent for non-formulary medications, but the employee's

contribution will be capped at one hundred (\$100.00) dollar per prescription. This level of employee cost will have some effect on the budget of a sick employee or dependent. However, the employee is protected from having to pay exorbitant amounts for medications. In addition, the City has agreed that it will try to help the employees find comparable, cheaper medications in the event that some employee is faced with massive prescription costs for non-formulary medications.

Finding of Fact: The parties agreed on plan design changes for their health insurance with the exception of the amount that the employee pays for non-formulary medications.

Suggested Language: Article 21.01 will be changed to show the modifications agreed upon by the parties.

Section 21.01 D (iv): Non-formulary - 30% with a one hundred (\$100.00) dollar cap per prescription.

Insurance Premiums: The parties disagreed on the City's proposal to increase the employee contributions to their health care found in Section 21.02 of the current contract. The City wants an uncapped contribution of ten (10%) percent of the plan cost per employee, and the Union wants to maintain the current contribution limit. Currently, the employee pays thirty five (\$35.00) dollars per month for health insurance.

The Union argues that increasing the employee contribution has proven to be an unsuccessful way to control medical costs, and the plan changes that the parties agreed to will help control costs. The Union also contends that the increase in medical costs that is driving the City's position on this issue is illusory. That is, the City had a very bad year last year with health care costs because of a few major illnesses. The Union believes that the City will not continue to have these kinds of problems every year and that its health

care expenditures will naturally drop to a more normal level in the coming years.³ In addition, the Union presented data on employee premium costs for some of its comparable jurisdictions, and the contribution limit varied widely. One jurisdiction (Middleburg Heights) had no employee contribution and one (North Olmstead) had an uncapped ten (10%) percent contribution. However, a fair reading of these data show that the contribution level in Westlake is below the average of even the wealthier suburbs in Northeast Ohio.

The City contends that regardless of any other fact, the Union membership pays too little for insurance. The City presented comparables data that showed that a ten (10%) percent contribution is not unusual throughout the area. However, the same data show that there is no uniformity in contribution levels and that there are a number of different ways that the surrounding localities charge their employees for health insurance. However, again the data do show that the contribution limit in Westlake is below the average contribution limit in the local labor market.

The City also contends that its health insurance premiums will increase significantly in the next few years. The City claims that its experience rating has been negatively affected by medical problems suffered by some of its employees (see footnote 3). Moreover, the City argues that the changes in health insurance laws (the so called Obamacare legislation) will have a negative effect on its finances in the coming years. The City contends that all analysts agree that the changes in health care legislation at the national level will not lead to lower medical care costs but just the reverse. In light of

³ There was no discussion of the number and nature of illnesses that the Union alluded to in its presentation. However, the City did not raise any objections to this part of the Union's presentation. Therefore, the fact finder believes that there were some (few) major illness in Westlake over the past year(s).

these facts, the City argues that the Union membership must begin to make a greater contribution to its health insurance plan.

The Fact Finder finds that the comparables data presented by the parties show that the current employee contribution is low. Moreover, the projections from every reputable source indicate that the cost of medical care will continue to rise in the coming years.

The health care changes enacted by Congress may help control costs in the long run, but in the short to intermediate time frame costs will continue their upward trend.

Consequently, the Fact Finder finds that the City proved its point that the employee contribution should increase.

The data presented by the parties show that a ten (10%) contribution is becoming more standard throughout the relevant labor market and the Northeast Ohio area in general. However, a ten (10%) percent contribution level is not yet the standard, and many jurisdictions have lower employee contributions. Moreover, the City's suggested uncapped contribution will increase the cost to the employee significantly in just a single year. Consequently, the Fact Finder is recommending a capped ten (10%) percent contribution.

Finding of Fact: The City proved that the current thirty five (\$35.00) dollar contribution made by the patrolmen to help defray the cost of their insurance is low.

Suggested Language: Section 21.02. Employees shall be required to share in the employer's cost for premiums. The premium sharing shall be ten (10%) percent of the total cost per employee per coverage type per month subject to the following maximums.

2011: seventy (\$70.00) dollars per month effective January 1, 2011, and

2012: one hundred (\$100.00) per month effective January 1, 2012.

Issue: Article XXIII – Sick Leave Bonus

Union Position: The Union demands an increase in the current sick leave bonus of one hundred (\$100.00) dollars to an employee who has not used more than four (4) hours of sick leave in a three month period to one hundred (\$100.00) dollars per month for each month in which a patrolman does not use more than four (4) hours of sick leave.

City Position: The City rejects the Union's demand.

Discussion: The basis for the Union's demand is that other city employees, the Police Gold Unit, have a more generous sick leave bonus payment than the patrolmen. The Union argues that the patrolmen's job is more strenuous and dangerous than the job of the police officer corps and that the patrolmen deserve a sick leave bonus payment equal to the bonus payment of the police managers.

The City rejects the patrolmen's demand and stated that 1) it was above the sick leave bonus payment in the applicable labor market and, 2) that no other City employee's bonus payment was as large as the payment demanded by the patrolmen. The City pointed out that the patrolmen could earn up to twelve (\$1,200.00) dollars per year in bonus payments and this would equal approximately a two (2%) percent raise. The City believes that the current bonus payment is reasonable when all of the facts surrounding the issue are examined.

The Fact Finder is unsure which position is correct based on internal parity considerations. The Union claims that the Gold Police Bargaining Unit has a monthly bonus period and that the patrolmen just want parity. The City's representative who negotiates all of the City's labor agreements states that there is no such provision in any

other City contract. This anomaly was not clarified during the hearing. However, if internal parity is not considered, the City's position on the issue is reasonable given all of the facts in the record.

The data on the comparables show that half of the surrounding jurisdictions do not have a sick leave bonus provision in their contracts. Of the jurisdictions offering a bonus, the provisions usually allow for some combination of comp time, paid time off, or a cash incentive. However, the Fact Finder has examined the provisions in the applicable contracts, and no bonus provision has a cost to the employer equal to the cost of the Union's demand. Moreover, in the current economic climate the Fact Finder does not believe that a bonus payment that is potentially equal to a two (2%) percent pay raise is reasonable. If the City has included a monthly bonus payment in other bargaining units' contracts, then it has created an inequity and the place to address that inequity is at the bargaining table in future negotiations.

Finding of Fact: The Union did not prove that the sick leave bonus provision in the patrolmen's contract should be increased.

Suggested Language: None

Issue: Article – New: Recreation Center Membership

Union Position: The Union demands that the patrolmen and their families receive free membership to the municipal recreation center.

City Position: The City rejects the Union's demand.

Discussion: The Union believes that physically fit individuals make better policemen and have fewer injuries. The Union argues that these facts mean that the City should

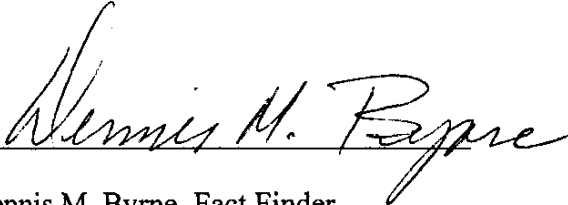
subvent the patrolmen's membership fees to the recreation center. The Union also argues that a more fit labor force might reduce injuries, etc., leading to lower health care costs.

The City argues that no comparable jurisdiction pays the membership fees to a health/recreation center for its employees. The City also stated that workable, used gym equipment was given to the police and fire departments for the safety forces to use. The City stated that this allowed the employees to work out with no membership fees. Finally, the City argued that it was bad public policy to pay for the recreation center membership fee for public employees but not for the citizens because the citizens paid for the recreation center with their taxes. For these reasons, the City rejects the Union's demand.

Finding of Fact: The Union did not prove that recreation center memberships were a standard benefit in any police contract.

Suggested Language: None

Signed this 17th day of October 2010, at Munroe Falls, Ohio.


Dennis M. Byrne, Fact Finder



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October 17, 2010

Mr. J. Russell Keith
General Counsel and Assistant Executive Director
State Employment Relations Board
65 East State Street
Columbus, Ohio 43215-

STATE EMPLOYMENT
RELATIONS BOARD
2010 OCT 26 P 1:19

Re: City of Westlake v. OPBA: SERB No. 10-MED-04-0580

Dear Mr. Keith:

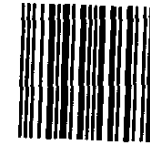
I am enclosing the Westlake report. I hope that it is understandable and if you have any questions, please contact me.

Sincerely,

Dennis Byrne
Arbitrator



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Dennis M. Byrne, Ph.D.

Arbitrator

272 Cheltenham Lane
Munroe Falls, OH 44262

TO:

Mr. J. Russell Keith
General Counsel and Assistant Executive
Director
State Employment Relations Board
65 East State Street
Columbus, Ohio 43215-4213