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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In The Matter Of The Fact-Finding Between:

THE CITY OF MAPLE HEIGHTS) Case No(s):
) 2010-MED-09-1184 (Patrol)
) 2010-MED-09-1185 (Sergeants)
) 2010-MED-09 1186 (Captains)
)
-AND-)
THE FRATERNAL ORDER OF)
POLICE, LODGE NO. 67)

APPEARANCES:

For The City:

Kenneth A. Schuman, Esq., Attorney

For The Union:

Robert M. Phillips, Esq., Attorney

BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND:

The City of Maple Heights, located in Cuyahoga County, Ohio, includes within its borders an estimated residential population of 26,000.

At the time of this proceeding, members of the City's Police Department were organized into three Bargaining Units - one Unit containing approximately thirty-five sworn Patrol Officers and Detectives; a second Unit consisting of fifteen Sergeants and Lieutenants and a third Unit composed of two Police Captains.

These Units are exclusively represented by the Fraternal Order of Police, Lodge No. 67 (George Murray Lodge, Maple Heights Division).

The City and the Union were signatories to a Collective Bargaining Agreement covering the Patrol Officers and Detectives Unit which became effective as of January 1, 2008 and expired on December 31, 2010. This Agreement formed the basis of the Contracts governing the other Units, and it is to that Agreement that the following Report is addressed.

With the advent of the last quarter of 2010, the Union filed a Notice to Negotiate, and on October 27, 2010 the parties met to begin bargaining the terms of a successor Contract.

Negotiations continued for another four sessions. At that point it appeared to the Union that the parties had reached tentative agreements on all outstanding issues. However, this understanding was not shared by the City, and negotiations resumed on February 17, 2011.

Impasse was declared, and, in consequence, on February 23, 2011, the undersigned was appointed Fact-Finder by the State Employment Relations Board.

The Fact-Finder conducted a mediation session with the parties on April 1, 2011. As a result, the resolution of the following issues were facilitated, and the parties executed Tentative Agreements with respect to proposals involving the following Articles:

Article XIII, Section 13.03 (Text of call-in, overtime and court pay, Section 13.03, of the Sergeants and Lieutenants Collective Bargaining Agreement adopted);

Article XIV, "Holidays", Section 14.04 (Conversion of four premium pick holidays to conform to Memorandum of Understanding on work schedules);

Article XIX, (Funeral leave expanded to include funerals of aunts and uncles);

Article XXIII, Section 23.01 (Uniform allowance increased to \$1,700.00 payable upon date of hire); (term "equal" in sentence two of this Section omitted);

Article XXIV, Section 24.01 (Bulletproof Vest allowance increased to \$1,200.00);

Article XXXIII, Section 33.01 (City to pay "salary reduction pension pick-up" to the Police and Fire Disability Pension Fund

as in Sergeants and Lieutenants Collective Bargaining Agreement);

Article XXXV, Sections 35.01, 35.02 and 35.03 (Educational allowance increased by \$100.00 at each Step), and

Article XLV, "Duration" (Agreement term to be two years from January 1, 2011 until midnight December 31, 2012).

The Fact-Finder finds appropriate and recommends the adoption of all of these Tentative Agreements.

Further, the parties tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis, all other Articles, Appendicies and Memoranda of Agreements from the 2008 Agreement except those listed below.

A series of proposals to add new provisions and amend other Articles and Sections of Articles of the expired Contract were withdrawn, and are deemed to have been abandoned.

Remaining unresolved were proposals submitted by one or both parties to make changes in, or to add Sections to, the following Articles:

Article XXVI - "Insurance";
Article XXXIII - "Rank Differential" and
Article XXXVIII - "Wages".

At the direction of the parties evidentiary hearings were held on April 21, 2011 and June 24, 2011. (The delay in holding the second day of hearing was attributable to the City's efforts

to develop data on potential cost savings linked to specific amendments to the Health Care Program).

Timely in advance of the first day of hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code, Section 4117.14(C)(3)(a).

At the hearings the Union offered the testimony and supporting report of Mary Schultz, CPA, CFE, of Sergeant & Associates.

The City, in its turn, provided financial statements and the testimony of its Finance Director.

In making his analysis of the evidence and his recommendations upon the unresolved issues, the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code Section 4117-9-05(K) namely:

"(a). Past collectively bargained agreements, if any, between the parties;

"(b). 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;

"(c). The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

"(d). The lawful authority of the public employer;

"(e). Any stipulation of the parties;

"(f). Such other facts, 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."

At the Fact-Finder's request, because of the number of fact-finding proceedings on his docket which closed earlier, the parties graciously extended the time within which he might issue his Report and Recommendations.

FACT-FINDER'S REPORT:

PREFACE:

The disagreements over the shape of the successor Contract involve the Union's demand for additional compensation, and the City's proposal for increasing the rate of Bargaining Unit participation in meeting the cost of health insurance.

Trumping all other considerations is the issue of whether the City's financial condition requires a rejection of the Union's requests and the granting of the City's proposal.

The City's expenses rose from \$12,991,000.00 in 2007 to a high of \$16,353,000.00 in 2009, before being reduced to \$15,327,000.00 in 2010.¹ On the other hand, General Fund

¹ The Police Department General Fund expenditures were reduced from \$3,395,000.00 in 2008 to \$2,564,000.00 in 2010. Wage expenditures from the Police Levy Fund were reduced from

revenues were only \$16,330,000.00 in 2009 and slumped to \$14,498,000.00 in 2010.

The City's 2010 Income Tax revenues declined by \$503,000.00 from the 2009 total of \$7,208,000.00 to \$6,704,945.00 in 2010.

Primarily as a result of the triennial reevaluation of property values, and 531 foreclosures, the property tax receipts declined by \$464,000.00 from \$2,948,000.00 in 2009 to \$2,440,000.00 in 2010.

To cope with its deteriorating financial condition, the City laid-off twenty-one employees, closed municipal swimming pools and reduced other City services. It limited its jail facility to house only Maple Heights prisoners.

No material increases in the City's Income Tax, or its Property Tax revenues are foreseen for 2011 and 2012.

As an April 17, 2011 Report issued by Sergeant Associates acknowledged, Maple Heights's expenditures in 2009 and 2010

\$883,000.00 in 2009 to \$817,000.00 in 2010. The 2011 Police Department budget called for a 5% increase amounting to \$125,000.00, but still a significantly smaller total than that provided in the 2008 budget.

The budget of most other City Departments decreased in 2011. However, three of the four senior citizen - welfare services Departments received increases in the 2011 budget; the Recreation Department received the largest increase - \$99,000.00 (50%).

exceeded revenues for those years so that the City's General Fund Balance fell from \$887,000.00 as of December 31, 2008, to \$36,300.00 as of December 31, 2010.

When this General Fund Balance is added to the 2010 Contingency Reserve Balance of \$121,000.00, the resulting unencumbered cash total of \$157,000.00 represents only 1% of the City's 2010 expenditures.

To maintain an "AA" or an equivalent superior bond rating, municipal credit rating agencies insist upon a minimum unencumbered, unrestricted year end cash balance of at least 5% of annual expenditures and, in these recessionary times, often a 10% balance.

According to the City's Finance Director, results from the first quarter of 2011 show the City operating at a deficit which, if continued for the entire year, would cause the City to incur a budget deficit of at least \$124,000.00. The projections for 2012 are even more dismal. Taking into account the expected loss of some \$460,000.00 of Local Government Funding and \$331,000.00 in Commercial Activity Tax ("CAT" or Tangible Personal Property Tax) receipts for 2012 the City projects a possible budget deficit of \$200,000.00 in 2012.

Should the City run a deficit in the General Fund as of September, 2012, the possibility of a default on its debt obligations looms.

Should the City's deficit exceed 1/12th of its General Fund Budget, the City would be placed on Fiscal Watch, and should the deficit exceed 1/6th of the General Fund Budget, the City would be placed an Fiscal Emergency status and subjected to State control.

CONTRACT ISSUES IN DISPUTE:

I. Article XXXII - "Rank Differential":

A. The 2008 Contract:

The expired Contract provided as follows:

"Section 33.02: Effective August 1, 2000, there shall be a two and one-half percent (2 ½%) differential in base pay between the rank of Patrol Officer Class 1 and Police Corporal."

B. The City's Proposal:

The City wishes to retain the present wage differential.

C. The Union's Proposal:

The Union seeks to increase the current 2.5% wage differential to 5%.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

A Corporal is a Patrol Officer who has been assigned to the rank of Corporal by the Chief of Police to supervise a shift when there is no Sergeant or Lieutenant available.

The responsibilities of the Corporal rank have not changed since the last Contract, nor is there adequate evidence that Officers in the rank of Corporal in comparable jurisdictions enjoy a larger differential.

Under these circumstances, the Fact-Finder does not believe it is equitable to recommend a wage rate increase solely for this relatively small segment of the Bargaining Unit when he cannot recommend any advancement for all other members.

Accordingly, the Fact-Finder does not find appropriate and does not recommend any change in the wage rate differential pertaining to the rank of Corporal.

II. Article XXXIII - "Wages":

A. The 2008 Contract:

The expired Agreement provided as follows:

"Section 33.01: The Employer shall institute and maintain a 'salary reduction pension pickup' plan for one hundred percent (100%) of the Employee's pension contribution obligation.

"Section 33.02: Effective January 1, 2008 bargaining unit Employees shall receive a three percent (3%) direct wage increase.

"Section 33.03: Effective January 1, 2009, bargaining unit Employees shall receive a three percent (3%) direct wage increase.

"Section 33.04: Effective January 1, 2010, bargaining unit Employees shall receive a three percent (3%) direct wage increase.

"Section 33.05: The hourly and annual rate schedules for all Employees, by job classification, is set forth in Exhibit 'A', attached hereto.

"Section 33.06: Effective August 1, 2000, Patrol Officers who are designated by the Chief to serve as Field Training Officers shall receive an additional two dollars (\$2.00) per hour while performing in said capacity.

"Section 33.07: Effective August 1, 2000, Patrol Officers who are designated by the Chief to serve as D.A.R.E. shall receive an additional two dollars (\$2.00) per hour while performing in said capacity.

"Section 33.08: Wages for Police Cadet and Police Cadet First Class positions shall be unilaterally established by the Employer through adoption of the appropriate City Ordinance. For consistency purposes, wage increases will be paid to Police Cadet and Police Cadet First Class position in accordance with the calendar established in this Article."

B. The City's Proposal:

The City seeks to extend the Contract from January 1, 2011 through December 31, 2012 without change in the wage schedules in effect for calendar year 2010.

C. The Union's Proposal:

The Union asks for a one-half of one percent (0.5%) wage increase retroactively effective to January 1, 2011 and a second one-half of one percent (0.5%) wage increase effective July 1, 2011. The Union then seeks an additional one-half of one percent (0.5%) increase to become effective on January 1, 2012 and a fourth increase of one-half and one percent (0.5%) to take effect as of July 1, 2012.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The additional cost of the tentatively agreed upon increased uniform, bulletproof vest and educational allowances was not presented on the record, but the additional outlay to the City of the Union's proposed wage increases for 2011 is estimated at \$33,000.00. While this cost seems modest, it is likely to trigger "me too" demands from the other Units and so significantly escalate the City's potential employee compensation liability.

The Union's Consultant suggested that there may be a sufficient cushion in the Police Levy Wages Budget to cover 2011

salary increases of one-half of one percent retroactive to January 1, and one-half of one percent to become effective on July 1st. For 2012, the Consultant concluded that funds are likely to be available to support an additional one-half of one percent increase effective as of January 1st.

These estimates must be considered speculative because of uncertainties as to the pace of economic recovery in Northeast Ohio, and, specifically, the income of the residents of the City of Maple Heights.

Maple Heights Patrol Officers current average earnings are \$61,887.72, approximately one thousand (\$1,000.00) dollars below the "Top Level Base Wage Compensation of Patrol Officers in thirty-four Cities in Cuyahoga County of \$62,707.00, as set forth in a September 30, 2010 Benchmark Report issued by the State Employment Relations Board.

Nonetheless, the very real adverse economic situation in which the City presently finds itself leads the Fact-Finder to recommend that the current wage structure remain in place for 2011 and 2012. By the time of the negotiations for the 2013 Contract the City's financial condition, which is contingent not only upon the state of the local economy, but also the level of support from the State and Federal Governments, should become clearer.

Accordingly, the Fact-Finder finds appropriate and recommends that Article XXXIII be amended as set forth below and as so amended carried forward and incorporated into the successor Contract:

"Section 33.01: The Employer shall institute and maintain a 'salary reduction pension pickup' plan for one hundred percent (100%) of the Employee's pension contribution obligation.

"Section 33.02: The hourly and annual rate schedules for all Employees, by job classification, is set forth below:

Hourly and Annual Rates Schedule:

<u>"Job Classification:</u>	<u>Hourly Rate:</u>	<u>Annual Rate:</u>
Police Cadet	\$22.0987	\$45,965.40
Police Cadet First Class	\$25.2906	\$52,604.48
Police Patrol Officer, Class 1	\$29.7571	\$61,887.72
Police Patrol Officer, Det.	\$31.2415	\$64,982.41
Police Corporal	\$30.4975	\$63,434.96

"Section 33.03: Effective August 1, 2000, Patrol Officers who are designated by the Chief to serve as Field Training Officers shall receive an additional two dollars (\$2.00) per hour while performing in said capacity.

"Section 33.04: Effective August 1, 2000, Patrol Officers who are designated by the Chief to serve as D.A.R.E. shall receive an additional two dollars (\$2.00) per hour while performing in said capacity.

"Section 33.05: Wages for Police Cadet and Police Cadet First Class positions shall be unilaterally established by the Employer through adoption of the appropriate City Ordinance."

III. Article XXVI - "Insurance":

A. The 2008 Contract:

The expired Contract provides:

"Section 26.01: Except as provided in Section 26.05 below, for the duration of this Agreement, the Employer will provide at the Employee's option, hospitalization coverage in the form of the CIGNA health and Major Medical Plan with Usual and Customary Rate Fee Schedule (effective February 1, 2008). This coverage shall be provided on either the single-contract basis or the family-contract basis, whichever is applicable to the Employee.

"The following monthly co-premium payments will be paid on total cost of medical insurance as follows:

	<u>2008</u>	<u>2009</u>	<u>2010 :</u>
Single	\$20.00	\$20.00	\$20.00
Family	\$40.00	\$40.00	\$40.00

"It is the Employee's responsibility to notify the Human Resources Department of any additions or deletions to be made to this contract coverage within thirty (30) days of such occurrence."

B. The City's Proposal:

The City demands an increase in employees' premium contributions to the City's health insurance plan from \$20.00 per month (single plan) and \$40.00 per month (family plan) to \$82.15 per month (single plan) and \$203.67 per month (family plan). The result would be that employees would pay fifteen percent (15%) of the present, 2011, health insurance premium cost.

C. The Union's Proposal:

The Union rejects any increase in employee contributions towards the cost of health care.

D. THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The present Maple Heights Health Insurance Plan requires no co-insurance, and no deductibles except for Emergency Room (\$50.00); Urgent Care Center (\$25.00) and Physician Office and certain other services (\$10.00). Total out-of-pocket responsibility is limited to \$300.00 for a single participant and \$600.00 for family coverage. Participants' prescription drug costs are atypically low.

The City's health insurance costs rose from \$1,432,000.00 in 2009 to \$1,969,000.00 in 2010.

The fundamental problem is that the structure of the current health insurance program is out-of-line with that found in most comparable jurisdictions. The zero co-insurance, limited deductibles and relatively small prescription drug responsibility encourages over utilization and subsidization of those Officers who have multiple dependent children.

Nevertheless, the City's proposal that Bargaining Unit members bear fifteen percent (15%) of the premium charge cannot be accepted.

In the Northeast Ohio area, public employees are paying, on average, approximately eight percent (8%) of health insurance premiums.

The Fact-Finder recommends that a joint Union - Management Health Insurance Committee be formed composed of representatives of the City and of each of the City's Bargaining Units as members. With the assistance of a knowledgeable insurance professional, the Committee would be charged with devising a more cost-effective program structure. For example, if the parties were simply to adopt a ninety/ten (90/10) co-payment plan without any other change, and make this co-payment feature effective on a City-wide basis, the City could save some \$114,000.00 per year.

Accordingly, the Fact-Finder finds appropriate and recommends that Article XXVI be amended by the addition of Section 26.09 as set forth below, and, as so amended, carried forward and incorporated into the successor Agreement:

Section 26.09: The City shall establish an Insurance Committee composed of a designee of the City and one member from each of the City's Bargaining Units which choose to participate. Each such Bargaining Unit member must be a member of a health insurance plan and shall be selected by the Unit's Collective Bargaining Representative.

"The Committee shall be charged with reviewing the Employer's current health care plans, including its plans for medical, dental and vision benefits, and recommending new or revised plans which are competitive in the health care market and will

achieve the goals of promoting cost containment within the plan and minimizing premium contributions by employees.

"In fulfilling its mission, the Committee shall consider co-payments, deductibles, prescription drug rates, maximum out-of-pocket limits, wellness programs and such other plan attributes and related matters as will achieve the goals set forth above.

"The Committee shall be convened by the City within ninety (90) days from the date of the execution of this Agreement and shall meet at least once a month thereafter at such times as may be convenient for the purpose of exploring and recommending cost savings measures and alternative health plans. The City shall provide one or more advisors or facilitators to assist the Committee in carrying-out its function.

"Bargaining Unit members shall be compensated at their regular hourly rate for time spent in participating in such meetings.

"The Committee's recommendations shall be presented to each Bargaining Unit and to the City Administration."

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Report and Recommendations signed, dated and issued at Cleveland, Ohio this 12th day of August, 2011.

Alan Miles Ruben
Fact-Finder

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