

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**In The Matter of Fact-Finding
Between**

**Fraternal Order of Police, Lodge No. 57
And**

City of Richmond Heights

Re: Case No(s). 10-MED-09-1291 10-MED-09-1292

FACT-FINDER: John Babel Jr.

Representatives

For Union

Robert M. Phillips
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For the City of Richmond Heights

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INTRODUCTION

The fact-finder was contacted under the auspices of SERB to assist in the re-opener of the negotiated procedure between the Fraternal Order of Police, Lodge No. 57 representing the patrol unit of 25 sworn police officers and promoted unit of 8 sworn police supervisory officers and The City of Richmond Heights.

This fact finding report is to address the reopener clause of the collective bargaining agreement, January 1, 2010 through December 31, 2012.

All subject matter shall be available to be “reopened” in the second and third year of the Agreement. Provided, however, that the parties may agree that negotiations in 2010 may cover both 2011 and 2012. The “reopener” negotiation shall take place pursuant to Ohio Revised Code 4717.14 *et seq* as if the negotiations were for a new collective bargaining agreement.

The hearing was held on March 25, 2011 with the fact finders report to be rendered on April 13, 2011. The fact-finder was very impressed with the skill and ability of those in attendance at the hearing and compliments them on their professionalism, and the high regard they have for the Richmond Height employees during very difficult financial concerns.

In reporting the conclusion of this hearing the fact-finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in 4117.14(4) and Rule 4117-9-05(a) past collectively bargained agreement 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 considerations 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 adjustment on the normal standard of public service; (d) the lawful authority of the public employer: (se) stipulations of the parties: (f) 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 in private employment.

Other representatives and consultants at the hearing were:

For the union:

Todd Leisure, Patrolman,
Rich Olexa, Sergeant
Mary Schultz, CPA, CFF, Consultant

For the city:

Sara J. Fognilli, Counsel
Gene A. Rove, Chief of Police
Lynda S. Rossiler, Director of Finance
Beverly A. Vitag, Consultant

All witnesses were given an oath to tell the truth.

BARGAINING HISTORY

The bargaining process has been most difficult do to the gravity of financial challenges facing The City which seems to continually change in a negative direction. The parties at the end of the calendar year 2009 completed a three year contract that was finalized by a conciliator report received on October, 2008 granting yearly 3% increases. At the end of the 2009 The City reduced city employees including 5 police officers, one dispatcher, one correction officer, two part-time corrections officers and one part-time secretary to resolve their financial situation.

Both parties, after difficult negotiations agreed to a three year agreement, 2010-2012 with the first year a salary freeze and an increase in out of pocket expenses for medical insurance deductibles and a reopener for 2011 and 2012. The FOB on December 3, 2010 forwarded proposals for the remaining two years of the agreement. The parties met once, with some understanding on personal days and vacation, but not on compensation issues. After a series of written proposals The City declared an impasse as its economic woes continued to deteriorate.

CITY FINANCE

This fact-finder has taken the liberty to spent time on the City's financial situation in that all issues are directly related to finances. The City's finances continued to deteriorate in 2008-09 due to declining revenue which may have been manageable until a state auditors report for 2007-2008, which was received by the City in September 2010. This report indicated that there were negative budgetary funds and deficit fund balance that must be corrected with General fund dollars at a projected cost of 1.4 million dollars. Audit report page 34:

Note 3: Accountability and Compliance

A. Compliance

The Fire Service Fund, COPS Fund, Senior Disabled Transportation Fund, Bond Retirement Fund, Capital Improvement Fund, Street Improvement Fund, and Building Improvement Fund had negative budgetary fund balances of \$438,716, \$44,872, \$1,557, \$58,906, \$808,846, \$381,866, and \$176,751, respectively, at December 31, 2008, in violation of Ohio Revised Code Section 5705.10. Also, the Fire Service Fund, Capital Improvement Fund, Building Improvement Fund, and Sewer Improvement Fund had appropriations in excess of estimated resources in the amount of \$811,316, \$1,147,872, \$463,426, and \$981,852, respectively, as of December 31, 2008, in violation of Ohio Revised Code Section 5705.39. Also, throughout 2008, the City was in violation of Ohio Revised Code Section 5705.41 (D) which requires fiscal officer certification prior to entering into any commitment for the expenditure of funds. The city also made various interfund transfers that were in violation of Ohio Revised Code Sections 5705.14 – 5705.16. Adjustments were made to the financial statements to eliminate those unallowed transfers. In addition, the following funds/accounts had expenditures plus encumbrances exceeding appropriations as of December 31, 2008, in violation of Ohio Revised Code Section 5705.41 (B):

<u>Fund/Account</u>	<u>Total</u> <u>Appropriations</u>	<u>Total</u> <u>Expenditures plus</u> <u>Encumbrances</u>	<u>Variance</u>
General Fund			
Police Department			
Education and Travel	\$14,000	\$16,025	(\$2,025)
Supplies and Materials	\$70,575	\$99,582	(\$29,007)
Recreation Department:			
Contractual	\$58,155	\$61,454	(\$3,299)
Building Department			
Education and Travel	\$4,071	\$6,035	(\$1,964)
Contractual	\$41,555	\$71,552	(\$29,997)
Supplies and Materials	\$4,150	\$6,139	(\$1,989)
Council			
Personnel	\$71,669	\$91,641	(\$19,972)
Administration			
Education and Travel	\$ 5,500	\$ 5,817	(\$317)
Contractual	\$895,550	\$895,558	(\$8)
Fire Service Fund			
Contractual	\$53,500	\$56,178	(\$2,678)
Street Construction Fund			
Supplies and Materials	\$366,050	\$367,389	(\$1,339)

B. Accountability

The Fire Service Fund, Bond Retirement Fund, Capital Improvements Fund, Building Improvements Fund, Sewer Improvement Fund, Police Pension Fund and Fire Pension Fund have deficit fund balances of \$913,152, \$58,906, \$836,114, \$379,739, \$408,467, \$155,079, and \$307,412 at December 31, 2008, respectively. These deficits are the result of the application of generally accepted accounting principles (GAAP). The General fund is liable for any deficit in these funds and provides operating transfers when cash is required, not when accruals occur.

The Director of Finance for The City testified that The City upon receiving the auditor's report on September 2010 started the process of correcting the misappropriated 1.4 million dollars and as to date the Capital Fund was still negative over \$800,000.

The 2011 annual general fund budget showed revenue at \$7,103,710, a 10.65% decrease from 2010. The City projected revenue trend for 2011 through 2015 at an increase of only \$179,013. Other concerns are intergovernment funds and inheritance taxes, which may decline as both are controlled by the State of Ohio.

The Union CPA, CFE consultant reinforced the auditor's report and the need for The City in transferring funds to correct the auditors findings. The report indicated a continuing concern that the Capital Improvement Fund was still in a \$772,000 deficit balance. The consultant indicated that The City in 2011 will receive an additional \$330,000 per year (1.1 mill of property tax) for Police and Fire Pension Fund which will alleviate a portion of the General Fund transfer out account to cover this cost which will help the General fund. There was a question that \$157,000 could be transferred from the Bond Retirement Fund, but The City consultant indicated that it was for a particular item and could not be transferred. The summary of the report suggested that resolving the financial concerns could be to increase revenue such as tax levies or long-term borrowing instead of reducing expenditures for employees.

ARTICLES

The issues in question are:

Article 15.1, 15.7

Article 16.1, 16.3, 16.4

Article 22

Article 24

Article 34

ARTICLE 15.1

City Position:

Reduce following classifications by three (3%) retroactive to 1-1-2010 as noted below:

	<u>Current</u>	<u>2011</u>	<u>2012</u>
Lieutenant**	\$82,844	\$80,359	\$80,359
Sergeant**	\$73,968	\$71,749	\$71,749
Patrolman 1 st Class	\$66,043	\$64,062	\$64,062
Patrolman 2 nd Class	\$60,805	\$58,981	\$58,981
Patrolman Probationary	\$50,031	\$48,530	\$48,530

** rank differentials 12%

Union Position:

2011 – 0%

2012 – 1% increase January 1, 2012 and 1% increase July 1, 2012

Discussion:

The City in resolving the auditors findings and projecting limited or no increases in revenue based upon a projected slow recovery of the economy (property taxes) and the climate at the State level (less dollar support for cities and possible inheritance tax reductions) require the proposal to reduce salary expenditures. The City submitted a finance plan to resolve the auditor’s findings which included a 3% wage reduction for all City employees. This has been accomplished for non-negotiated personnel and will be proposed in negotiations with other unions. The Union proposes that there are other ways to resolve the financial crisis such as increasing revenue with tax levies or possible borrowing to resolve the immediate crisis. The City did show a nine year property and income tax receipts and negotiated wage increases indicating that income taxes over the nine year period (2002 – 2010) increased 0.61%, property tax 1.3% and negotiated wages 3.1%.

RECOMMENDATION:

That the current salary schedule stay the same at the current 2010 level for all classifications for 2011 and 2012.

Rationale

The City proposed data and need for the proposed 3% reduction, but concern for the employees, who are doing an excellent job under difficult circumstances must be considered. They will have a three year wage freeze. The amended Official Certificate of Estimated Resources indicated a slight increase in revenue from The City’s budgeted amount which will help but not resolve its financial crisis.

ARTICLE 15.7 Proficiency Allowance

City Position:

Delete this section.

Union Position:

Current language.

RECOMMENDATION:

City position to delete Article 15.7

Rationale

This is a cost issue that is difficult for The City to continue under its present financial situation.

ARTICLE 16.1 Holidays

City Position:

Delete one holiday, Employee's Birthday

Union Position:

Current language.

RECOMMENDATION

City position to eliminate Employee Birthday holiday.

Rationale

A cost issue in that it may involve overtime to cover a shift. This would change holidays from eleven to ten per year.

ARTICLE 16.3

City Position:

Delete Section 16.3

Union Position:

Increase the personal day entitlement in section 16.3 to twelve (12) hours versus eight (8) hours.

RECOMMENDATION

City position to delete this one additional personal day.

Rationale

This is a cost issue as to possible overtime cost and if this day not used the employee will be paid for the day.

ARTICLE 16.4

City Position:

Delete Section 16.4

Union Position:

Current language.

RECOMMENDATION

City position to delete Section 16.4.

Rationale

This is a cost issue and although these are important family events, pay at 1 ½ rates, which is normal for working on holidays, seems appropriate during these difficult financial times.

ARTICLE 22, Insurance

City Position:

Delete current language for Sections 22.1, 22.2, 22.3, and replace with actual Healthcare Plan as attached as City Exhibit C.

Add that the employee shall contribute fifteen percent (15%) of total cost of the applicable health care program.

Add eliminate the employer/employee (Union) healthcare committee.

Union Position:

Current language.

RECOMMENDATION

- **Replace Section 22.1 with the actual health plan as presently implemented.**
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- **Current language for Section 22.2**
- **Section 22.3, Current language, Employees shall be responsible to pay, depending on their family status, either \$500 of the \$4000 police officers family Health Saving Account or \$250 of the \$2000.00 police officers single Health Saving Account**
- **No change in the employer/employee healthcare committee**

Rationale

This was a difficult area for this fact finder in that health care costs are a major financial concern for any City. The recent decision by all parties to move to actual Health plan with an estimated \$100,000 saving in this area is to be commended. To make addition changes at this time seems inappropriate. considering the changes Senate Bill 5 may impose on all parties.

ARTICLE 24, Vacation

City Position:

Current language.

Union Position:

Add the following: “When after normal use an officer has a balance remaining in the vacation entitlement of 12 hours or less, said balance may be utilized incrementally at the officers’ choosing with approval of the shift supervisor”.

RECOMMENDATION

Current language.

Rationale

This does not seem to be a problem that needs to be changed.

ARTICLE 34

PRESENT AGREEMENT

This Agreement shall be effective as of January 1, 2010, and shall remain in full force and effect until December 31, 2010 and thereafter from year to year, unless notice of an intent to terminate or modify this Agreement is served by one party upon the other as provided in O.R.C. Chapter 4117, *et seq.* If such notice is given, and provided that the Union maintains its status as the exclusive bargaining representative of the members of the bargaining unit, this Agreement shall remain in full force and effect as long as the parties are engaged in negotiations as provided in O.R.C. 4117, *et seq.*

Acceptance of the fact-finder report will complete the reopener clause and told contract will be in effect until December 31, 2012.

Fact-Finder

John Babel Jr.
April 13, 2011