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IN THE MATTER OF FACT FINDING

BETWEEN

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

AND

BAINBRIDGE TOWNSHIP

SERB CASE # 10-MED-09-1339 (Sergeants)

Robert G. Stein, Fact Finder

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INTRODUCTION

Prior to fact finding the parties negotiated over a successor agreement and eventually declared impasse. The parties then mutually agreed to one day of mediation, which proved fruitless, and then proceeded to fact finding. A fact finding hearing was held on August 26, 2011 at the offices of Bainbridge Township (hereinafter "Township", "Employer" or "Bainbridge") in Bainbridge Township, Ohio. The parties were offered a full and complete opportunity to present evidence and testimony in support of their positions. During the fact finding hearing, the fact finder once again offered to resolve all issues through mediation, but again this approach proved to be a unproductive, and the evidentiary hearing was concluded the same day. Pre-hearing submissions were received from both parties in a timely fashion. The two bargaining units are represented by the Ohio Patrolmen's Benevolent Association (hereinafter "Union" or "bargaining unit" or "OPBA") and consist of approximately four (4) full-time police sergeants in one unit and seven (7) dispatchers in the other unit. This is the second contract for both bargaining units; the first contracts ran from January 2, 2009 to December 31, 2010.

General/State/Local Economic Outlook

General/State: Uncertainty appears to be an apt characterization of the state of the current national and international economy that by virtue of world interdependence impacts the economy of northeast Ohio. The economy in Ohio continues to suffer the effects of a national recession that is currently stalled following what was a very slow recovery. Several months ago what has been called the great recession was declared to be officially ended, yet for people in Ohio, who are unemployed, underemployed, have experienced dramatic declines in their home values, face foreclosure, have given back benefits and have foregone wage increases for years, such declarations are meaningless. The impact of the recession upon Ohio's revenue stream is plain. The Ohio legislature and the current Governor have dramatically reduced funding to local governments as the state of Ohio seeks ways to cut costs, generate revenue, and balance its budget. Cities, like Cleveland, that were already weakened by years of experiencing manufacturing capacity in decline were particularly vulnerable as the events of the recession took hold and the cushion of President Obama's stimulus package ran its course. At this point in time it is difficult to say what path Ohio must take to economic recovery. The unemployment rate has remained above 9% for the state and the Greater Cleveland area, and few new jobs have been created during the summer of 2011. Every month, and lately it seems every week, on a national and

international front, there is economic news that causes wild fluctuations in the financial sector. Meanwhile President Obama, recognizing the sluggish economy and its potential threat to trigger a second recession, has fashioned another stimulus package to create jobs, but prospects for its passage are uncertain at best given a continuing contentious climate in Washington. One of the more certain and troubling aspects of the current Ohio economy is the loss of high paying skilled jobs. They number in the tens of thousands and clearly underscore the existing structural problems of unemployment in areas such as manufacturing and construction. All the news is not negative; there are indicators of recovery and some employers are doing well in this recession and its aftermath. Public Employers like the Bainbridge Township have considerable reserves to hopefully weather the continued storm of economic uncertainty. Prudence would dictate that the sobering realities of dramatically fluctuating and anemic economic indices currently need to be factored into any projected budgeting process for a public employer in Ohio. To their credit, public employee unions and employees in Ohio have, in the main, recognized and responded to their employers who continue to experience a shortfall in revenue coupled with rising costs. State employees and many county, city, and township public employees in and outside of Ohio continue to make unprecedented financial sacrifices in the form of layoffs, wage freezes, benefit givebacks, furlough days and in paying more for their medical coverage. When dealing with concessionary bargaining, evenhandedness of sacrifice

takes on even greater significance than it does in more normal times where needed market based equity adjustments can be reasonably addressed as a normal subject of negotiations. The critical and central factor during times of economic hardship is authenticity. If sacrifice is called for by employees and managers alike, then it must be based upon reality and not hyperbole.

Issues: Health Insurance, Wages, and Duration. Issue 1, Article 18 Group Benefit

Plans-Health Care, The Employer proposes language modifications in Section 1, by adding HSA, or HRA options and seeks the addition of language to address changes or modifications in the effective dates of the plan year and deductibles. In Section 2 the Employer seeks to increase the employee share of health care premium from 10% to 20%, and reducing the Township share by the same percentage. The Employer argues that for 2009-2010 rising health care costs caused a change to a high deductible plan. (See Employer's Position Statement) In order to offset said costs, the Township established an HSA account for each employee and funded it at \$4,500 for family and \$2,250 for single coverage and the Township has proposed maintaining the plan for 2011 and 2012. The bargaining unit employee's current share of health care premium payments for family coverage is 10% or \$1,524.00 annually/\$127 per month. Under the Employer's proposed 20% employee premium this total would rise to \$3,108 annually or \$259 per month. The Union proposes to maintain the 90-10 premium payment ratio pointing out that statewide township employees pay an average of 4% toward their premium costs. Additionally, the Union seeks to add

language in Section 1 that protects comparable coverage and cost sharing for the bargaining unit, including HRA or HSA contributions.

The language changes in Section 1 as proposed by the Employer, in the light of the rising costs of health care, are reasonable and effective tools to keep health costs at a reasonable level, while maintaining effective coverage. What the Township did in 2009 was prudent and practical in terms of assuming additional risk to offset premium costs. And the existence of a healthcare committee certainly can be important if said committee is fully engaged and has meaningful input in evaluating the benefits and costs of health care coverage. The Union's arguments to add language to Section 1 that protects benefit levels and cost sharing is likewise reasonable, since in collective bargaining it is important to know the details of the bargain you have struck, and what you gave up to gain that bargain. To allow it to be changed unilaterally in terms of coverage and costs to employees is contrary to tenets of collective bargaining and reaching a "bargain." However, in reconciling the proposed language of both parties, it is necessary to modify each proposal in order to eliminate inconsistent and conflicting language. The data does not support a change in the cost ratio for health care premiums at this time. The Employer argued that the average American worker in America contributes \$333 per month for family health care coverage, does not factor in the large number of employees who may work in sectors, such as retail, where health care coverage is at best modest if it exists at all, and where employees have to

pay a much larger share of their premium just to maintain basic coverage. This is not the case in Bainbridge, which clearly provides better-quality health care coverage. Understandably, the Employer in maintaining very good coverage seeks to moderate health care costs, but is in a much better position to bring this about incrementally and not in a wholesale manner. In accordance with SERB data, the current 90-10 ratio is still above the average paid by other Townships in the state of Ohio (Ux. 15)

Issue 2, Article 24, Wages: The Union argues that Bainbridge Township is one of the wealthiest communities in northeast Ohio with household income that is double the national average. Fortunately, the Township does not suffer many of the economic hardships that have plagued numerous communities and states in the nation. The data indicates that Township revenues and investments (approximately 15 million) continue to grow at a steady pace, as argued by the Union. (Ux. 1, 2, 3, 4, 5, 6, 7, 8, 9) The Union underscores the fact that in Bainbridge Township, unlike other public employers in northeast Ohio, there is no financial exigency that justifies the Employer's wage offer which was made for the first time in fact finding, rather than negotiations. The Union highlights the comparable City of Beachwood, a nearby community, where a police sergeant earns approximately \$80,000 per year, while an equivalent ranked sergeant in East Cleveland makes approximately \$50,000 per year as an illustration of how local financial conditions influence wages. The Union argues that such differences while found in Cuyahoga County are far more "nuanced"

on Geauga County. The Union points out that the sergeant's bargaining unit, which has only been unionized for a couple of years, has not enjoyed the growth in wages provided to the patrol officers unit, and as a result the level of sergeant's pay is only 4.5% above that of the top patrol officer (See Union's Position statement). The Union further contends that equity pay adjustments are needed for both the sergeant's unit and the dispatcher's unit, but concedes that given general economic conditions, the timing for said adjustments needs to be deferred. The Union proposes a 3% wage increase for 1/1/11, 1/1/12, and 1/1/13, based upon a three (3) year Agreement that expires 12/31/13. The Union argues that 2010 SERB data demonstrates that employees in townships are still receiving wage increases, albeit, lower than in years past. (Ux. 10) The Employer concedes that its finances are sound and that it is not arguing an inability to pay, but strongly contends that the current economy is far from stable and that is why it is seeking a two year contract, which is the same length as the first agreement between the parties. The Employer points out that because the operation of the Police Department is dependent upon levies it is directly dependent upon the public. And, in 2005 and 2006, arguably a much more stable economic period, the Township citizens rejected three successive levies before passing one in 2007. The economy is clearly in a weakened position at this time and its future is uncertain, which does not bode well for support from the citizens of the Township, argues the Employer. Therefore, it is necessary to exercise prudence in consolidating services and in cutting costs,

which the Employer has accomplished during recent years. The Employer avers that the Police Fund (Levies based) and the General Fund are separate and distinct and the General Fund does not subsidize the Police Fund or the Department's expenses, and that the Police Department has a history of stretching levy funding for several years, with the current levy (2007) scheduled to last until 2014. As an indicator of the austerity of the Police Department, the Township points out that it has no current plans to provide raises for non-unit employees, including the Chief of Police in 2011 or 2012, and in its proposal it is asking the sergeant's and dispatcher's bargaining units to "step up" and share in the sacrifice already made by all other Township employees. (See Employer's Position Statement) The Township's wage offer is no increase in 2011 and a 1% wage increase on 1/1/12 based upon a two (2) year agreement that expires December 31, 2012. In support of its position, the Employer provided data of what it argues are valid comparable public entities: including Chester Township, Copley Township, Madison Township, Russell Township, and Sagamore Hills Township. In terms of comparable cities, which the Employer points out have considerable advantages in terms of differing revenue options, the Employer identified several comparable cities, including the nearby cities of Beachwood, Lyndhurst, Solon, and South Euclid. (See Employer's Presentation Book) It argues, that its sergeants and dispatchers compare very favorable to these other jurisdictions. It points out that the separate bargaining units for sergeants and

dispatchers was first recognized in 2008, only three years ago and both units completed their first agreements on December 31, 2010.

The evidence substantiates the fact that the Township has been judicious in its approach to budgeting and has spent the public's money wisely. And, it is certainly sensible to exercise prudence during this very uncertain economic period. Nevertheless, the data indicates that the Township is not in the same position as many other a public sector entities that have had to drastically cut discretionary spending, enacted unpaid furlough days, negotiated benefit reductions, laid off employees, and in some cases have had to curtail long existing services to the public just to balance their budgets. However, the data also indicates that current salary levels received by the bargaining unit are very competitive and since 2002 salary increases have ranged between 2.8% and 4.5% and have averaged 3.58%, which is very respectable given other sectors in northeast Ohio. In addition, when compared to other seemingly healthy financial communities in northeast Ohio, such as the City of Solon, Sagamore Hills Township, and Beachwood, the sergeant's unit is fairly compensated. The same can be said for the dispatcher unit when compared to Beachwood, Solon, and Lyndhurst. As previously stated, the Employer proposes no increase in 2011 and a 1% increase in 2012, while the Union is seeking a 3% increase each year for both bargaining units. The only internal comparable bargaining unit in the City is the Road Department organized by the Teamster's Local 436. That unit accepted a wage freeze for 2010 and 2011 and the non-represented

employees of the Township received no wage increases in 2009, 2010, and 2011. In 2010 the OPBA bargaining units of sergeants and dispatchers received salary increases of 3.5%, which was negotiated in 2008, prior to the current economic malaise. However, the fact that the sergeant's and dispatcher's bargaining units received a very reasonable salary increase in 2010, when everyone else in the Township received no increase is significant when viewing what is reasonable for 2011, which is yet another year for no wage increases for the Teamster's bargaining unit and non represented employees in the Township. On the other hand, current inflationary figures based upon the CPI-U, indicate that for 2012 a 1% wage increase is will not adequately address the erosive effects of inflation on what are arguably competitive salaries. Even when food and energy costs are factored out of the CPI-U for the last twelve (12) months from August 2011 the inflation rate is still two percent (2%) and as a practical matter, energy and food costs are routine every day costs to most people. In order to maintain their purchasing power the current salaries should be adjusted in part to compensate for the effects of inflation. Understandably, the inflation rate for each individual varies and is modified by spending habits of individuals. For example if an employee drives a fuel efficient car, shops at discount stores, limits his/her entertainment activities, and is healthy with little or no medical costs, the effects of inflation for these individuals will be less than others who make up the national average. Conversely it is unrealistic to assume that employees are not paying more, and in some cases substantially more for the basics of food and

fuel, which during the last twelve (12) months has represented 1.8% of the total inflationary rate. And, while it may be true that because of their dire financial circumstances, many public employers in Ohio are trying to avoid layoffs and cannot even consider raises to offset the effects of inflation, Bainbridge Township is not in this position.

Issue 3, Article 27, Duration, the uncertain times and the history of bargaining between the parties support the Employer's proposal for a two (2) year, versus a three (3) year agreement.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties

6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

Issue 1 Article 18 GROUP BENEFIT PLANS

RECOMMENDATION:

Section 1: Modify current language as follows:

- a) During the term of this Agreement, the Township shall maintain benefit plans which provide the following group insurance benefits: major medical/hospitalization; dental; life insurance; and short term disability. (The major medical/hospitalization benefits may be provided through an optional **HSA or HRA, or through an optional HMO or PPO.**) Employees covered by this Agreement shall be covered under the same group insurance plans that the Township makes available to all other Township employees, including Patrol Officers. **The Township maintains the right to change insurance plans and/or services so long as comparable coverage is maintained.** Any changes or modifications in any of those benefit plans will be considered part of this Agreement, including changing providers of these group insurance plans and **the effective dates of the plan year, and** any changes in benefit levels, coinsurance and/or **increased** employee premium contribution **dollar amounts that maintain the ratio of contributions contained in Section 4 below.** The Township will notify the OPBA in advance of making changes in the providers, the benefit levels, or employee contributions. Employees covered by this Agreement shall be eligible to participate in the Section 125 Premium Only Payment Plan authorized by the Township Trustees, which allows employee contributions toward premiums to be on a pre-tax basis.

b) The Township will maintain employee deductibles and HRA contributions at current levels for the 2011 and 2012 Plan Years.

Section 2. Maintain Current Language

Section 3. Maintain Current Language

Section 4. Maintain Current Language, except change dates in first sentence to:
For plan year 2011-2012, remainder current language.

Issue 2 Article 24 Wages

RECOMMENDATION:

Maintain current salary levels for 2011

Effective 1/1/12 wage increases shall be 2.0%

Issue 3 Article 27 DURATION

This Agreement shall remain in full force and effect from **January 1, 2011 until December 31, 2012**, 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 Section 4117.14 of the Ohio Revised Code.

TENTATIVE AGREEMENT

During negotiations, the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the determinations contained in this report.

The fact finder respectfully submits the above recommendations to the parties this ____ day of October 2011 in Portage County, Ohio.

Robert G. Stein, Fact finder