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STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the matter of Fact Finding between:	)	SERB No. 11-MED-04-0698
	)	
CITY OF MIAMISBURG, OHIO,	)	Hearing: August 26, 2011
Public Employer,	)	at Miamisburg, Ohio
and	)	
	)	Date of Report:
OHIO PATROLMEN'S BENEVOLENT	)	September 30, 2011
ASSOCIATION ,	)	
Employee Organization.	)	

FACT FINDING REPORT

Appearances:

Mitchell B. Goldberg, Appointed Fact Finder

For the City:

Donald L. Crain, Esq.,	Attorney
George S. Perrine,	Finance Director
Kathy Weisgarber,	Human Resources Director
Dody Bruck,	Assistant City Manager
Alex Ewing,	Attorney

For the OPBA:

Joseph Hegedus,	Attorney
Justin R, Small,	MSBG
David O'Brien,	MSBG

I. Introduction and Background.

SERB appointed the undersigned as the Fact Finder for this public employment labor dispute on July 11, 2011. The parties scheduled a meeting with the Fact Finder on July 19, 2011 in an attempt to mediate the unresolved issues. The attempt to arrive at a settlement over the issues at impasse proved unsuccessful, and the dispute proceeded to a fact-finding hearing on August 26, 2011.

The City is located in southwestern Ohio in Montgomery County. It operates as a municipal corporation under a home rule charter with a Council/Manager form of government. The OPBA is the exclusive bargaining representative for all full-time police officers except for sergeants and higher ranks. There are 33 unit positions, 28 of which are filled. The parties met in negotiating sessions in June and July culminating in the mediation session on July 19.

The two unresolved issues, wages and health insurance premium contributions, are the result of re-opener provisions in the current CBA that is in effect from July 1, 2010 through June 30, 2013. The matter of wages (Article 10) is subject to a re-opener for years two and three of the CBA 7/1/11-6/30/12 and 7/1/12-6/30/13). The members pay 10% of the health insurance premium cost (Article 14). That issue is also subject to a re-opener for the last two years of the CBA.

The parties submitted timely pre-hearing statements setting forth their positions on the unresolved issues in accordance with SERB rules and guidelines. In making the following recommendations on the unresolved issues, the Fact Finder applied all of the criteria required for consideration under Chapter 4117 of the Ohio Revised Code, Section 4117-9-05, and SERB Rules and Guidelines.

II. Economic Background and Evidence.

The National Economic Condition

The present economic climate remains uncertain. The country has experienced the worst recession and economic downturn since the great depression. The prime mortgage crisis, the financial and auto industry bailouts, the housing market collapse and mass foreclosures have taken a toll on consumer confidence. The Stimulus was too little and was focused on shoring up state budgets that were having shortfalls due to high unemployment claims, welfare, Medicaid obligations, subsidies of health insurance premiums for the unemployed, and aid to local school districts to prevent layoffs and cutbacks, This infusion invested money for infrastructure and other projects in an effort to produce a multiplier effect that would produce more private sector jobs.[1] However, the recovery has been slow and has not lowered the high unemployment rate.

The uncertainty about improvement in my opinion is the result of a political stalemate in Washington that is more focused on reducing long term debt, and less concerned about addressing the recovery on a short term basis. One party is myopically focused only on cutting spending and reducing the size of the federal government. The other side has agreed to spending cuts, but wants the long term debt crisis to be addressed with revenue enhancements that involve tax increases for certain taxpayers and tax reform. The problem is that the loss of many federal and state government jobs at a time when unemployment is already at high levels does nothing but exacerbate

[1] The City received $400,000 of American Recovery and Reinvestment Act funds (the Stimulus) for the resurfacing of Maue Road.

unemployment. It reduces the amount of consumer spending and erodes consumer confidence.

The Federal Reserve's monetary policies have been helpful but are somewhat limited. Interest rates and mortgage rates are at all time lows. Banks and corporations have billions or more in cash, but are unwilling to extend credit or make investments due to the uncertainty of the political and economic environments. It is difficult to see how this multifaceted spiral of negativity will be addressed and remedied in the coming years now that the Stimulus has begun to fade. As a result, public and private employers are challenged to navigate through this period of economic uncertainty that has produced a downgrading of U.S. debt, high unemployment, stock market volatility, low private investment and tight bank credit.

State Budgetary Problems

High unemployment has produced significant declines in state revenue due to reduced income tax and sales tax collections. The budget was slashed to address an $8 billion deficit. This has been accomplished partly by layoffs, furloughs and attrition. The remainder is from large cuts to the local government fund by approximately 34%, and the cutting of state programs including the education budget. The state at the same time is in a tax-cutting mode for the purpose of attracting businesses and more taxpayers. The inheritance tax is being eliminated and the tangible personal property tax reimbursements will be entirely phased out by 2013. The inheritance tax funnels about 80% of its revenue to local governments. Local government funding from utility taxes has been cut by nearly 50%. The administration is committed to reducing taxes at the same time the cuts are being implemented. Moreover, the Governor has proposed that the state take over all local income tax collections for efficiency purposes. Understandably, this proposal does not sit well with local mayors and managers, who believe that the state would use the powerful collection agency to nip at their bottom lines.[2]

The City's Finances

Local governments are looking to consolidations and shared services in addition to voluntary layoff plans, attrition and downsizing in order to avoid substantial layoffs.[3] Miamisburg is no exception to this phenomenon. It eliminated its public safety dispatch operations and joined the Montgomery County Regional Dispatch Center. Council voted to consolidate its fire services with Miami Township into a joint fire district. Staffing levels have steadily declined through attrition from a high of 194 full-time positions from 2001-2003 to a present level of 165.

Expenditures began to exceed revenue in 2004 making it necessary for the City to draw on its reserves. The City was able to generate more revenue in 2007, 2008 and 2009. In 2008, general fund revenue was $15.5 million against expenses of approximately $15.25 million. General fund revenue rose in 2009 to over $16 million, with expenses of about $14.5 million. By 2010, however, expenses began exceeding

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[2] Mayors bristle at onslaught of cuts to cities from Kasich, The Pain Dealer, September 1, 2011, p.1.
[3] Scott, Dave, Local Governments Are Making Cuts, Ohio.com, August 28, 2011.

revenue again. The budget for 2011 estimates general fund revenue of about $16.5 million and expenses of slightly under $16 million.

The City has attempted to manage its wages and benefits by implementing what it refers to as a “soft freeze” for all of its employees. This amounts to a 0% across the board cost of living freeze in 2010 for non-union employees. The police received a $1,000 lump sum payment for 2010 with no addition to the base, with re-openers in years 2 and 3. It made the same payment to the Teamsters members who accepted a one-year lump sum payment of $1,000 and 0% for the remaining 2 years. The City intends to do the same for the fire fighters when their CBA expires. The “soft” part of the freeze means that CBA step increases will still be paid and non-union employees will receive merit pay increases in similar amounts comparable to the step payments.

Notwithstanding the above facts and circumstances, the parties substantially disagree over the state of the City’s current financial condition and prospects for the future. The City developed a 5-year plan that attempts to raise revenue in the short term and for the long term. This includes the income tax increase that kicked in at the beginning of 2011, and aggressive economic development and programming that attempts to bring employers into the community. The goal is to create a diversity of revenue streams. On the expense side, it wants to invest in infrastructure needs, avoid emergency expenses, and establish fees for services. The infrastructure investments go hand in hand with economic development projects in order to make the community attractive for prospective employers and residents.

The investment objectives depend upon a high bond rating so that funds can be borrowed at optimal interest rates. The City wants to restore its goal of a general fund reserve at the 25% level. In past years, in order to balance the general fund and expenses, and in order to still maintain targeted reserves, certain expenses were shifted out of the general fund into special funds such as capital funds, street lighting, storm water and a fire levy fund. As revenue increases through the tax increase, and other expenses are lowered, some of these expenses will be shifted back to the general fund. Nevertheless, the City believes that it needs to make up for capital expenditures that were delayed during past years. It should be spending over $1million for roadway needs and another $1 million for vehicles and equipment. Accordingly, it believes that employee expenses and benefits need to be kept to manageable minimums to avoid increases beyond projected revenue that is expected to decline for the above reasons.

The Union believes that the City's plan and projections are overly conservative. It believes that there are more than sufficient funds to provide minimal cost of living pay increases for its members. The City is in far better economic shape than other communities in rustbelt Montgomery County. It should not be compared to Dayton, or to nearby cities of Middletown and Hamilton that have experienced an exodus of once vigorous manufacturing economic activity. It has achieved economic diversification that provides stability. It has benefited from economic growth and development for more than 20 years.

The closing of DOE's Mound facility was a substantial loss, but it has managed to overcome this loss by growth and development outside the Mound facility. Bright spots include the Kettering Health Network, which has added many jobs and expanded its operations, Avery, Dennison, Evenflo, Dayton Superior and other employers. The Austin development site has already brought in additional revenue, and is expected to bring in considerably more with Motoman Robotics and other major employers.

While net assets are somewhat irrelevant in terms of analyzing funds for day-to-day operations, the statement of net assets provides a perspective of the City as a whole. The City's balance sheet as of December 31, 2010 showed that the City's assets exceeded liabilities by a total of $71 million. Because of the City's budgetary management, actual revenue receipts exceeded budget by 2% or $330,000. The revenue increase from 2009 was due to income tax collections, property tax collections and estate tax receipts. Its expenses came in $2 million less than the $17.5 million budgeted amount. The general fund balance was $2 million over budget. The City attributes this to the wage freezes that were implemented in 2010.

My overall conclusion after reading the abundance of financial material supplied by the parties is that the City was successful in managing through the past economic downturn. This, however, was accomplished in part by holding down its labor costs throughout all segments of its employees and administrative staff. Uncertainties still remain insofar as any meaningful economic recovery in the next several years, and a conservative approach relative to budgetary management is still necessary.

However, one factor remains abnormal in what the City describes as the “new normal” insofar as wages and benefits management for public employers. This is the City’s high general fund ending balance percentages and other available revenue sources. Moody’s, who affirmed the City’s Aa2 long-term GOLT rating found that the ending fund balance was reduced from 24% of receipts on a cash basis at the end of 2008 to “a solid 16.7% of 2008 receipts” going into 2009. The ending balance was expected to be at the 12% level at the end of 2009 due to a $750,000 operating deficit. But, the City expected the fund reserves to increase in 2011 once the new income tax rate takes effect, and expenses were reduced by the abovementioned cuts. The Moody’s report finds that the City retains existing financial flexibility with 3.27 charter mills that are unused, and if levied could produce an additional $1.5 million per year. It also mentions the $5.5 million or 36.6% of general fund revenues that are contained in a Municipal Trust fund that was established from the sale of the City’s municipal power facility. The interest can be used for general fund expenditures. While the principal cannot be used without Council and public vote, it does provide the City with an additional cushion should the City lose a major income taxpayer.

The above facts show that the City’s ending fund balance is far greater than other Ohio municipalities, many of which are at 10% or below. Yet, these communities have managed to pay minimal cost of living pay increases. The GFOA Research Bulletin dated September 1990 states that a Moody’s analyst considered a 5% fund balance to be prudent. S&P considered a 5% fund balance as adequate. This Bulletin is outdated, but it does mention that the percentage should be increased during periods of uncertainty. We are now in that period, and in my opinion, it will last for years and not months. Nevertheless, the City's high percentage of ending fund balances shows that there are more than sufficient funds to pay for minimal cost of living pay increases.

The cost of living for middle class and low-income wage earners is an important factor to consider. As of July 2011 the CPI-U increased 3.6% over the previous 12 months. Food price increases were 4.2%, energy was 19%, gasoline was 33.3%, medical care commodities was 3.2%, transportation services were 2.9%, and medical care services were 3.2%. These increases should not be ignored or overlooked. Increased payments for these products and services, while wages and benefits remain stagnant, or increase only moderately, means a lower standard of living for all of these workers. Moreover, the increases could result in financial problems for some.

III. Unresolved Issues.

A. Wages.

External Comparables

Both sides submitted exhibits with comparables relative to wages and benefits. Both sets include Vandalia, Moraine, West Carrollton and Trotwood. The City's list also includes Beavercreek, Fairborn and Springboro. The Union's list includes Centerville, Englewood, Huber Heights, Kettering and Oakwood. The adjacent city of West Carrollton is slightly higher than Miamisburg in terms of top wages, but slightly lower in total forms of compensation. They received a 0% increase for 2011, but they just finished a CBA that had three years of 3% across the board increases. They received a 3% increase in 2010 when this unit received no increase on the base, but a $1,000 lump sum payment. The most that can be said from a review of the lists is that Miamisburg is comparable with smaller cities of its size in nearby areas. These include West Carrollton, Vandalia and Englewood. Trotwood compensation is somewhat lower, but nearby Centerville is higher. I find that a wage increase or so-called "soft" freeze for 2012 and 2013 would not cause a substantial variance in the present wages and benefits comparisons with departments in the area.[4]

Internal Comparables

The OPBA unit members received a $1,000 lump sum (not added to the base) payment for the first year – July1, 2010 June 30, 2011. This Report makes recommendations for re- openers for years ending June 30 2012 and June 30, 2013. The Teamsters agreed to a lump sum payment in year one, and three years of a freeze on the base. Non-union employees received a $1,000 payment and the City plans to freeze their wages for 2012. The police sergeants received the lump sum for year one, and are subject to re-openers for years two and three. The IAFF contract does not expire until the end of 2011. They received a 3% across-the-board increase for 2011 and will negotiate for a new contract term soon. Their contract began in 2008 before the hard economic times set in. The City will bargain for a wage freeze on the base, similar to that governing the other employees.

[4] The City uses the term "soft" freeze because the unit members would still receive their step payments.

The City's argument is compelling that all employee groups should share the pain and that the safety forces, because they receive the benefit of binding arbitration, should not unfairly benefit at the expense of the other employees. The criterion of internal comparability is recognized and accepted by fact finders as a matter of fundamental fairness. However, it must be considered together with the statutory standards and guidelines that include external comparability and labor markets both in the public and private sectors.

B. Health Insurance.

The issue of employee health insurance costs is inexorably connected to wages in the scheme of overall compensation analysis. Overall increased premium costs for a plan produces automatic increased expenditure for employees who must contribute a percentage of the increased costs. The cost increase for renewing the present Anthem plan was 18.8%, effective September 1, 2011. This brought the monthly family plan costs to above $1,375 for most members. The City presently pays 90% of the premium and the employees pay 10%. Accordingly, employees with family plans automatically pay an increase of approximately $300 per year effective 9/1/11 if their contribution level remains at 10%.

The City states that any across the board wage increase would justify an additional premium contribution level. It computes that a 1% across-the-board wage increase will cost approximately $17,348, and a 1% increase in insurance premium will cost approximately $3,560, or a 5% increase in premium share.

Recent statistics on rising health insurance premiums appeared in this week's Cleveland Plain Dealer. The average family plan cost in the U.S. is over $15,000 per year, or $1,800 per month, a rise of 113% over the last 10 years. Wages in the U.S. over the same period grew only about 34%. The City argues that the employees are paying at the low end of premium contributions and that an increase is justified, particularly if a wage increase is recommended.

I believe a mandatory premium contribution increase to 15% is a foregone conclusion, regardless of whether SB-5 is repealed. The state unions were willing to agree to this increase before the bill was even passed. Even if the bill is repealed, the legislature will easily pass a law to this effect on a piecemeal basis, due to the wide public support for this deficit reduction item. When this passes, these employees will automatically incur an additional annual expenditure of $69 per month, or $828 per year. This is in addition to the $300 additional annual cost caused by Anthem's premium increase for 2011. These expense increases while wages remain frozen amount to a large constructive compensation loss for all City employees. If the goal is to only prevent compensation increases and maintain a status quo, it has missed the mark. Instead, there will be reduced compensation for all.

IV. Recommendations.

Based upon the above record and facts, I recommend that the base wages for year two of the CBA (7-1-11- 6-30-12 be frozen at 0%. I recommend that for year three, each member shall receive a $1,000 lump sum payment (not added to the base). This payment should be made to provide some relief for the increased health insurance premium costs that the members have already received and further added costs that will likely incur during the remaining contract term. Further, should any other group of employees (i.e. administration, management, non-bargaining unit employees, or other organized unit members) receive a cost of living increase, or an across-the-board pay increase, the same increase shall be paid to this unit's members covering the same period of time.

There shall be no change in the health insurance premium contribution level for the balance of this contract term.

Date of Report: September 30, 2011

/s/______________________________
Mitchell B. Goldberg
Appointed Fact Finder

CERTIFICATE OF SERVICE

This Report was served on J. Russell Keith, General Counsel & Assistant Executive Director, SERB on September 30, 2011 by electronic mail. Copies were served on the same date to Joseph Hegedus, OPBA, and Donald Crain, Attorney for the City, by electronic mail.

/s/______________________________
Mitchell B. Goldberg