

**STATE EMPLOYMENT RELATIONS BOARD  
State of Ohio**

In the matter of Fact Finding between:	)	SERB No. 11-MED-11-1663
	)	
CITY OF WARRENSVILLE HEIGHTS,	)	Hearing: December 20, 2012
OHIO,	)	
Public Employer,	)	Date of Report: January 11, 2013
	)	
and	)	<b>FACT FINDING REPORT</b>
	)	
INTERNATIONAL ASSOCIATION OF	)	
FIREFIGHTERS, LOCAL 1591,	)	Before Mitchell B. Goldberg,
	)	SERB Appointed Fact Finder
Employee Organization.	)	

Appearances: For the Employer: Jon M. Dileno, Attorney, Zashin & Rich Co., L.P.A.  
For the Union: Ryan J. Lemmerbrock, Attorney, Muskovitz & Lemmerbrock, LLC

I. Introduction and Background.

The Ohio State Employment Relations Board (“SERB”) appointed the undersigned as the Fact Finder of this public employment labor dispute on October 19, 2012. The parties agreed that the issuance date for this Report would be January 11, 2013. They submitted timely pre-hearing statements setting forth their respective positions on the unresolved issues in accordance with SERB Rules and Guidelines. The hearing was conducted on December 20, 2012 at the City's offices. They provided oral evidence and submitted documentary exhibits in support of their positions. One issue was mediated resulting in a tentative agreement, but the parties were unable to resolve any of the other issues through joint mediation efforts.

The City is a municipality located 8 miles from downtown Cleveland in the southeast portion of Cuyahoga County. It has approximately 13,000 residents, down from about 15,000 in 2000. It is one

of the “inner ring” Cleveland suburbs with well-maintained neighborhoods, some industry, and a “thriving and engaging business community.”<sup>1</sup> Over 10,000 people work in the city. They provide about 68.8% of the City's revenue through income taxes. Property taxes comprise about 10% of the total revenues. Like other municipalities in Ohio, the State's budget cutting and tax reductions present serious budgetary challenges. By the end of 2013, it will have its local government funding reduced by as much as 75%, or by \$1 million over a two-year period. Personal property tax revenue and the commercial activity tax (“CAT”) revenues have been eliminated. The State inheritance tax has been repealed, thereby eliminating any revenue from that source.

On the revenue side, the citizens passed an income tax increase from 2.0% to 2.6% on July 1, 2009. The City received a \$1.4 million grant for the rehiring of laid off firefighters and for the employment of an additional firefighter. It is applying for additional grant monies. It charges fees for services that amount to approximately 7.6 % of its total revenue.

The City has engaged in substantial efforts to improve its financial condition and economic development through a number of major construction initiatives, long-term borrowing and investment, tax abatements to assist in the construction and expansion of existing business and commercial facilities within the City, and regional economic development activities with Cleveland and surrounding areas.

The Union is one of 6 bargaining units. There are 6 lieutenants and 22 firefighters in the IAFF Local 1591 unit. The City has no plans to hire additional staffing based upon the declining population since 2000. Run volume, however, is at a high level, mostly EMS calls. The CBA expired on December 31, 2011. The parties have been attempting to negotiate a successor contract for three years, beginning January 1, 2012. They remain at impasse over a number of economic issues. They are: (1) wages; (2) health insurance; (3) vacations; (4) holiday pay; (5) hours of work; (6) sick leave; and (7)

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<sup>1</sup> CAFR Report, year ending 12/31/11.

maternity leave.

The following recommendations are made in accordance with the existing statutory factors that are incorporated in SERB rules and guidelines. They are:

- (A) Past collectively bargained agreements between the parties.
- (B) Consideration of issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (C) The interests 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) The stipulations of the parties.
- (F) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The following recommendations on all of the unresolved issues incorporates all unchanged provisions of the expired CBA, all tentative agreements reached between the parties during their negotiations, through mediation, and any agreements made at the hearing.

## II. Unresolved Issues

### *Further Financial and Economic Evidence*

The financial collapse, the following great recession, high unemployment, and the slow recovery experienced throughout most of the northern Ohio communities since 2008 did not spare Warrensville Heights. It was experiencing budgetary problems in 2007 when its expenditures exceeded its revenue by over \$237,000. By 2008, the deficit increased to over \$500,000, and in 2009 it increased to nearly \$982,000. By that time, its ending fund balance was a negative \$551,000. The citizens came to the rescue in 2009 with the income tax increase. At the same time, the City engaged in substantial budget cutting throughout its workforce. Non-unit employees received furlough days and salaried

employees took a pay cut. Represented employees with existing CBAs accepted layoffs of firefighters, laborers and dispatchers. Vacancies have not been filled. The employment rolls have declined from 172 in 2008 to 145 by the end of 2011. The budget cutting, austerity measures and the additional income tax revenue has stabilized the present budget, producing by 2011, a cash reserve of \$1.7 million with revenues of \$16.4 million. The City realized a 6.7% increase in total revenue. The general fund balance increased by nearly \$1.8 million, with a year-end carryover of over \$3.8 million.<sup>2</sup> 2012 is on track for further financial improvement. Revenue should be about \$15.7 million. As of October, expenditures were about \$12 million, with an unencumbered balance of \$3.5 million. Expenses should be about \$1.4 million less than budget at the end of 2012. A reasonable projection shows that the City is on pace to have a general fund carryover balance of nearly \$4.9 million, or over a 30% general fund unencumbered balance carryover.

The present financial condition can be described as “cautiously optimistic.” The City is able to pay the wages and benefits proposed by the Union; it does not claim otherwise. However, it believes that its efforts should continue to be directed toward future long term growth and economic development, in addition to providing needed maintenance of existing equipment, and the replacement of old structures and equipment. It would like to continue to closely manage its personnel costs, and maintain sufficient funds to address additional problems that it will face over the next few years. These include rising and unmanageable health care costs, further State revenue reductions, and other costs and expenses that as yet are uncertain, but will nevertheless occur. It would like to maintain its ending fund balances at a reasonable or acceptable level given these uncertain economic times.

The Union needs no education about the great recession and slow recovery. Its members are middle class wage earners who have weathered the brunt of the recession. Its members have agreed to a wage freeze (2008) and benefit concessions of over \$56,000 throughout this period. At the same

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<sup>2</sup> This computes to a 23% carryover reserve, well over the GFOA's recommended industrial standard of 16%.

time, they have watched their home values decline, experienced higher education costs for their children, and watched medical costs and expenses spiral out of control at annual double digit percentages. They have endured \$4.00/gal gasoline prices, and bear the uncertainty of higher expense obligations and fees that may result from the Affordable Care Act and other federal and state budget cutting efforts. Whatever savings they have managed to accumulate to pay for higher education for their children are paying nearly zero returns, while their home equities have declined and are recovering at a very slow pace.

The Union believes that its members have been treated unequally relative to the concessions and economic sacrifices that have been made by other City employee groups. The Fire Department, for example, unlike other groups such as the police, is a revenue generator. Its EMS billing has averaged over \$340,541 in general fund revenue over the past 5 years. Yet, the City is continuing to allocate less of the general fund monies to the department's budget. It has suffered layoffs and higher concessions than the police department that received no layoffs.

#### A. Wages – Article XI

The City is proposing an across-the-board wage freeze for the first year, a 1.5% increase for year 2 of the CBA, and a 1% increase in the third year, beginning January 1, 2014. The Union is proposing 0%, 3% and 2.5% over the same period.

#### *External Comparisons*

I believe that the nearby cities of Bedford and Bedford Heights that are south of the City are very comparable communities in terms of housing stock, industry and commercial activities.<sup>3</sup> Beachwood and Shaker Heights to the north and east, and Orange and Solon to the east are more affluent communities with richer tax bases. The nearby communities of Garfield Heights and Maple Heights appear less economically stable than Warrensville Heights in terms of their tax bases. In terms

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<sup>3</sup> However, the decline in new market values for homes is much larger in Warrensville Heights, Maple Heights and Garfield. Heights.

of wages, the City's base wages for a 15-year firefighter ranks under Bedford and Bedford Heights, \$65,305 compared to \$68,704 and \$67,042 respectively. In terms of total compensation, the City is at \$71,577 compared with Bedford at \$74,264 and Bedford Heights at \$74,209. Bedford Heights firefighters received a 1% increase in 2012, and a 1.25% increase for 2013. They received an average of 2.4% in increases from 2008 through 2013. Bedford firefighters received 2.5% in 2012 and will receive 3.25% in 2013 after receiving a freeze in 2010. They also averaged 2.4% increases each year from 2008-2013. Using the Union's proposal of 0% for 2012, the Union's average annual wage increase from 2008-2012 is 1.8%.

The SERB report for wage settlements in Cleveland from 2009-2011 were 2.18%, 1.34% and 0.68%. However, for Fire contracts the percentages are 2.47, 1.74 and 1.23. The Union received 9% in raises over this same period.

#### *Internal Comparisons*

Both parties believe that internal comparisons with the police CBA should drive the resolution of this issue. However, they disagree about what evidence or facts should be used to determine the comparison. The City believes that the firefighters have been treated more favorably. Comparing 10-year firefighters with 10-year police officers, and using a 0% for 2012 for firefighters and 3% under the police CBA, the City computes total compensation for the firefighter at \$69,564, and only \$68,329 for the police officer.. The disparity carries through 2013 and 2014 under the City's' exhibit, leaving a \$1200 disparity in favor of firefighter at the end of 2012. This comparison, however, adds the paramedic premium to the firefighter base, but no premium for the police officer. Both parties acknowledge that there are some types of extra or premium type payments that police receive that are not paid to firefighters.<sup>4</sup> Nevertheless, the City believes that the police CBA that provides 3% in 2012,

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<sup>4</sup> The firefighters receive EMT-1, EMT-P and HAZMAT technician and specialist pay. They also receive a clothing-maintenance allowance. The police receive court pay, accident investigation pay, K-9 pay, SWAT pay, and a uniform

0% in 2013 and 2.5% in 2014 compared with 0%, 1.5% and 1% in its proposal, still favors the firefighters over the police, a disparity that it is trying to minimize.

Moreover, to bolster the City's position that the firefighters are receiving higher wages and benefits than any other employee group, it points out that the Teamster unit agreed to a 3-year contract with raises of 0% for 2012, 1.5% for 2013, and 1% for 2014. It believes the police contract is an anomaly due to the fact that they received 3 years of freezes from 2009-2011, when the firefighters received 9% over the same period.<sup>5</sup>

The following evidence shows the percentage wage increases for the firefighters and police units from 2001-2011:

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
WHFD	4	5	3.5	4	4.5	4	4	0	2	3	4
WHPD	4	3.5	4.25	4.5	0	0	12	6	0	0	0

The average wage increase for the firefighters over this 11-year period is 3.45%, compared with the average police unit wage increase of 3.11%. The total percentages over the 11-year period are 38% for the firefighters and 34.25% for the police. If 2012 is factored in, the police received 3% in their CBA. If the firefighters receive a freeze for 2012, the averages would be 3.104% for police over the 12-year period and 3.166% for the firefighters over the same period. For 2013 and 2014, the police are receiving 0% and 2.5%. Parity would be restored if the Union receives a total of 2.5% in raises in 2013 and 2014.

However, one must consider that the police received a total of 5.5% in raises over the 3-year period 2012-2014. This will provide a buffer for those members to absorb the substantial increase in their medical insurance premium contributions, and provide a minimal cost-of-living adjustment. I

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allowance.

<sup>5</sup> The lengthy freezes were due to protracted litigation over a conciliation award. The City contends that the 5.5% package in their new CBA is an attempt to compensate the police members for the lengthy freezes. Otherwise, they would have received a package close to the Teamsters CBA.

believe that a 2.5% increase for the firefighters for 2013-2014 will be insufficient to accomplish the

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same objective. Accordingly, I find that 4% over the same period will provide for their ability to better absorb these new premium contribution expenses and provide something toward a cost-of-living adjustment. The new 10% premium contributions, with or without future adjustments to the caps, will provide substantial long term savings for the City. But the new premium expenses will provide immediate cash flow concerns for members. A reasonable wage increase should provide some cushion to ease this immediate burden. If the disparity is a concern for the City, it can be addressed in the next round of negotiations after the City and the unions are able to navigate through the insurance cost issues.

**Recommendation:** Based upon all of the evidence submitted, I recommend that upon execution of the CBA, the City pay a 0% across-the-board wage increase for 2012, 2% for 2013, and 2% for 2014.

#### B. Insurance – Article XVIII

The City wants to reign in its escalating and unmanageable medical insurance premium costs by having all of its employees under the same plans, with everyone contributing 10% toward the monthly premium costs. The police, who previously contributed nothing toward the premiums are now required in their new CBA to contribute 10%, the same as the Teamsters and others. The Union is willing to join in, but is not willing to accept a wage-insurance package that results in a net pay decrease for the remaining years of a new contract. The City's premium contribution proposal does contain caps of \$183/month for family coverage and \$70/month for single coverage.

The Union projects that when the contributions start, the family plan contributions (10%) will approximate \$136/month, or \$1,632 per year. A 1% pay increase on the base will produce an increase of \$660, or \$55/month toward the contribution. The City's wage proposal, if recommended, would result in a net pay decrease for the 18 firefighters who presently take the family plan. Another pay

increase for 2014 of 1% would bring another \$660 in wages, totaling \$1320 in new wages to pay for

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\$1632 in new expenses. This is still insufficient to break even. Moreover, new rates for 2014, based on past history could rise again in double digits, resulting in additional contributions that are still below the caps. A 10% increase in rates would produce contribution increases amounting to about \$150/month,, or \$1800/year; still a net compensation reduction. One must, however, add in the premium-paramedic pay that nearly all of the unit members receive, which is additional compensation to use toward the payment of the newly imposed insurance contributions. The above wage recommendation is an attempt to provide a buffer to meet the new substantial insurance contributions, and provide some type of cost of living increase so that the new expenses will not wreck family budgets that include fixed expenses..

The 10% figure is reasonable and in line with the contribution percentages paid by all represented public employees in the State, and those in the surrounding areas. It is less than the 15% the legislature was attempting to impose on all state public employees. The police contract contains the new contribution percentage and caps. It is now the accepted practice that all public employees, including safety forces, must contribute toward the continuing rise of hospital, medical and health care costs, that in turn drive up insurance premiums, so that governmental units can control their budgets.

**Recommendation:** Effective upon the execution of a new contract, members shall contribute 10% of the City's monthly premiums for medical, prescription drug, vision and dental coverage. The monthly contribution levels, however, shall not exceed \$183/month for family coverage, and \$70/month for single coverage. The rest of the insurance article shall mirror the language in the police CBA.

1. Holidays – Article XIV

The City proposes, for cost-savings purposes, to reduce the time off for holidays from the

present four-time off of 24 hours to 11 hours for current employees and 6 hours for new employees. All

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of the rest of the City employees receive 8 hours of holiday time-off. Many cities adjust the time off for firefighters as a matter of equity to account for their 24-hour shifts. In this city, the firefighters receive holiday time-off for 11 holidays at 24 hours for each shift. Plus, if they work the holidays, they receive an overtime rate. This benefit is the highest in the county, and far more paid time-off and premium pay than other City employees. In addition to the excessive costs for this benefit, including additional overtime pay, it leads to manpower shortages.

The Union acknowledges that its paid holidays are more than the average of neighboring departments, but paid leave should be viewed in total, together with vacation leave and other paid leave time. When viewed in total, Bedford firefighters receive more paid leave. Moreover, Bedford Heights firefighters work less annual hours. They receive less paid leave, but their lower total annual work hours should be taken into account. In terms of the number of paid holidays, the firefighters are in line with other City employees. Moreover, a workday is a workday, regardless of whether it is an 8-hour shift or a 24-hour shift. The firefighters work more hours per year than the police and all other employees. A reduction in holiday pay would also reduce the ability to sell back unused time as provided for in the expired CBA. The City has not proposed cutting holiday leave time for any other employee.

I find that there is no compelling reason for reducing this compensation benefit. It has been in place since 1985. The City is offering nothing in return. It has substantially reduced the insurance benefits, and the Union has agreed to substantial concessions to accommodate the City's past financial problems. While the specific bargain exchange for obtaining this benefit in the past was not identified, there must have been a bargained-for exchange. There are no gifts in this business.

**Recommendation:** No change.

D. Vacations – Article XIII

The City proposes to reduce annual vacation accrual from one to two hours per step for current

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employees, and more for new hires. The evidence, however, shows that the vacation days are in line with neighboring departments, and with other City employees. This benefit has been in place since 1991. The denial for this proposal is based upon the same rationale as denying current holiday pay benefits.

**Recommendation:** No change.

E. Sick Leave – Article XX

The City proposes to reduce annual sick leave accrual from 168 hours to 144. It believes that this is a modest reduction. The Union oppose this change for obvious reasons. However, it proposes new language that would permit members to donate their unused sick leave time to others in need. These proposals appear ripe for some type of compromise, but none has occurred. The parties are encouraged to make some type of mutual accommodation in this regard.

**Recommendation:** No change.

F. Hours of Work – Article XVII

The Union proposes a reduction in the average work week from 49.7 to 48. It acknowledges that the current work week is in line with other nearby departments. However, it is offering this proposal as an alternative to its proposed wage increase of 3% for 2013. The parties disagree as to the impact upon the City's budget. I believe that this proposal is not reasonable at this time for a number of reasons. The average workweek presently is among the lowest in the area. Bedford is also among the lowest at 48, but many are in the range of 49-51. The firefighters under my above recommendation would receive pay raises in 2013 and 2014. Finally, the department is presently at staffing levels below historical levels. A work week reduction would probably have cost issues related to overtime payments and would otherwise affect other work issues.

The City proposes that sick leave time and other accrued leave time be eliminated as hours

worked for overtime calculation purposes. The OPBA and Teamster contracts do not count this time as

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time worked for overtime purposes. The Union objects to this proposal for the same reasons it objects to the other benefits that have been longstanding in their contracts. Sick time has been included in hours worked since 1991. The City has not shown any abuse regarding the use of sick leaves. I believe, as stated above, that the Union negotiated over this item either expressly or impliedly, and something was compromised to obtain this benefit. The City has not proposed a compromise on its part; merely another concession.

**Recommendation:** No change

G. Sick Leave – Article XX and Maternity Leave (FMLA) – Article XXV

The City propose a change to Articles XX and XXV. Those changes require the use of accrued sick time and other accrued time first, and that this time should run concurrently with FMLA leave. Many public and private sector contracts provide that contract leaves and FMLA leaves run consecutively, and not concurrently. This provides for longer unpaid leaves and longer recovery time to protect job security. This is consistent with the existing CBA language. I do not recommend the City's proposed changes for the above reasons. The parties, however, should review the FMLA language and make any necessary changes to comply with FMLA laws, rules and standards.

**Recommendation:** No change.

Date of Award: January 11, 2013

/s/ \_\_\_\_\_  
Mitchell B. Goldberg, Fact Finder

CERTIFICATE OF SERVICE

This Report was served upon the following persons by electronic mail on the 11<sup>th</sup> day of January, 2013:

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/s/ \_\_\_\_\_  
Mitchell B. Goldberg