

FACT FINDING REPORT

[SERB Case No. 11-MED-11-1675]

The **INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1331**, the “**Association**”, represents “all full time non-probationary Fire Fighters and assistant fire chiefs * *” in the **CITY OF PERRYSBURG**, the “**City**”. There are approximately twenty-three (23) employees in the bargaining unit.

The collective bargaining agreement between the parties expired on February 12, 2012. After the Association filed its Notice to Negotiate on November 27, 2011, the parties held negotiating sessions on January 27, March 12, 23, April 9 and May 10, 2012. The parties reached tentative agreement on all issues presented, except on the issues of wages and duration.

Since the parties have reached an impasse in negotiations with respect to the issues of wages and duration, the parties have submitted their dispute to fact finding. Pursuant to the procedures of the State Employment Relations Board, “SERB”, Hyman Cohen, Esq. was appointed as Fact Finder.

On May 15, 2012, a fact finding hearing was held at the Municipal Building, Perrysburg, Ohio. The City was represented by David M. Smigelski, Esq. of the law firm of Spengler, Nathanson,

P.L.L. located in Toledo, Ohio; and the Association was represented by Michelle T. Sullivan, Esq. of the law firm of Allotta, Farley & Widman Co., LPA, located in Toledo, Ohio.

I

BACKGROUND

The City of Perrysburg is located in Wood County, in the northwestern region of Ohio. As of 2010, the City has a population of 20,623. The City's residents had a median household income of \$72,051 and a per capita income of \$36,978, which are substantially above the averages of the cities in the northwestern area of Ohio and well above the national average of \$47,358 and \$25,113, respectively. The City's promotional literature on its demographics sets forth a median family income of \$92,205, median household income of \$74,432 and median home value of \$201,700.

The City acknowledged at the hearing that it had eliminated all of its debt. Moreover, the City has a bond rating of Aa3 from Moody's. An Aa3 municipal rating from Moody's indicates that the City "demonstrates strong credit-worthiness relative to other US municipal or tax-exempt issues or issues". Thus, Standard & Poor's gives the City a rating of "AA-/Stable" for its sewer system

improvement bonds. In Standard & Poor's opinion, the City has "very strong income and wealth levels", healthy operations supported by very strong reserve levels" and "low overall debt burden".

I

WAGES

a. The Dispute

The Association has proposed maintaining the current pay matrix with annual increases for its bargaining unit members, as follows: effective March 2012: 3.0%; effective March 2013: 3.0%; and effective March 2014: 3.0%. The City has proposed annual increases of 1.25% for the Association's unit members, based upon the current pay matrix.

b. FINANCIAL POSITION

1. The City

As of January 1, 2012, the City carried an unencumbered balance of \$3,948,101.39 which represents approximately 21% of its

expenditures for 2011. The general expenditures included a \$3,000,000 transfer to the capital improvement fund.

The City acknowledges its ability to pay the Association's proposed 3% increase in wages each of the three (3) years beginning March 2012. Moreover, the City acknowledges that it has eliminated all debt.

In support of its position, the City raises several concerns which impact its financial position, going forward. The City points out that the estate tax of \$200,000 which is budgeted for 2012 is scheduled to be eliminated in 2013; in addition, Local Government Funds that the City is to receive from the State is to be decreased.

Also, there has been "erosion" of the solar industry, which employs and affects a segment of the City's residents. In addition, Rexam, a plastics company is relocating out of the City. However, Owens-Illinois is scheduled to bring a research facility to the City.

The City is continuing to expand its geographic size by annexing residential, commercial and vacant land which "eventually will be zoned for residential use". Annexation, the City indicates, brings with it both opportunities and risks. Services must be provided to all areas of its jurisdiction, which, according to the City will include lower income and retirement-age residents.

In ten (10) years the City estimates that there will be an expansion of the Department of Public Safety which requires a corresponding increase in expenses to meet the demands of a growing population. In this connection, as part of the City's five-year capital improvement plan, \$2,500,000 has been budgeted in 2013 for the planning, design and construction of a second fire station (\$159,210 for 2012 has been approved for the 2012 budget). Additional Fire Fighters are anticipated to be hired. The City indicates that cash or a short term loan will be utilized for the new fire station.

It cannot be ignored that annexation and an increase in population generates property and income tax revenue. Such taxes constitute a major source of revenues for the City.

Also, the City indicates that the Collective Bargaining Agreement provides that employees on a 24/48 hour schedule are paid overtime based upon the higher 8-hour rate. Thus, employees working minimal overtime are provided with generous compensation.

ANALYSIS

The City's case for its wage proposal of an annualized increase of 1.25%, beginning March, 2012, with a wage re-opener in March, 2014 must be evaluated in light of data provided by the Association. It bears repeating that as of January 1, 2012, the City carried an unencumbered balance of \$3,948,101.39 which represents 21% of its expenditures for 2011. The general expenditures included a \$3,000,000 transfer to the capital improvement fund.

As an important factor in formulating its wage proposal, the Association refers to its experience negotiating with the City over a wage re-opener in 2009. The current negotiations, beginning in November, 2011 occurred about one (1) year after negotiations over the wage re-opener. In a letter dated October 21, 2010, David M. Smigelski, Esq. on behalf of the City, proposed no wage adjustment (a "wage freeze") in which he stated that the 2011 proposed budget estimated an increase in combined funds of less than 1%. He also stated that there would be no salary adjustments for other City employees, including executive and administrative staff.

The dispute over wages was submitted to fact finding. The City's proposed wage freeze according to the Association was an influential factor in the Fact Finder's recommendation of a 1.75% increase in 2011.

Subsequently, the Police and the City went to fact finding and the City agreed to the Fact Finder's recommendation of a 2% increase for employees; and the City increased the wages of its non-union employees by 2.45% with many of these non-union employees receiving 3% or more.

Without commenting on the Association's belief that the City did not act in good faith with respect to negotiations arising from the wage-re-opener in late 2010, it should be noted that the City had an unencumbered balance of \$2,999,180 in 2009 and \$3,462,000 in 2010. The unencumbered fund balances were 17.5% of expenditures in 2009 and 20.5% in 2010, respectively.

Moreover, in 2012, the City has budgeted for wage increases in other City departments which exceeded the annualized 1.25% three-year increase, the City has proposed to the Fire Fighters in this dispute. For example, the City agreed to 1.75% increases for Patrol Officers in 2012 and 2013 plus lump sum payments of \$2,200 for the elimination of roll call time.

The City acknowledges that it has the ability to pay for the Association's proposed wage increases. In the City's "Position Statement" the City states that to agree to the Association's request

for increases in excess of the accepted market rates is short-sighted and in disregard of the unstable economy”.

The City goes on to state “while surrounding communities grapple with difficult issues revolving around layoffs and reductions in force, the city has been fortunate to maintain intact its current work force without resort to such drastic measures”. The City indicates that it “does not anticipate that layoffs will become necessary should current personnel costs remain constant”.

The City also indicates that “although Perrysburg has managed to weather the most devastating effects the economic storm has levied upon its closest neighbors, the City should not be deprived of the ability to protect itself from the same fate.”

However, in the City’s Basic Financial Statement, for the year ending December 31, 2010, the City states “throughout the recent economic downturn, the City has been able to maintain its current level of services, without any significant budgetary changes * *. Income tax collections increased by 6% over 2009. These “figures reflect a continued trend by the City * * to fare relatively better than the lagging regional economy”.

In addition, it must be underscored that each year for the last four (4) years, the City has enjoyed unencumbered fund balances, as

follows: \$3,737,219 – 2008; \$2,999,180 – 2009; \$3,462,090 – 2010; and \$3,948,103 in 2011. These unencumbered fund balances constitute the following percentages of expenditures: 19% in 2008; 17.5% in 2009; 20.5% in 2010 and 21% in 2011.

Through March 2012, income from tax receipts is approximately the same as the receipts during the first three (3) months of 2011. There is nothing in the evidentiary record to indicate that in 2012, the City's unencumbered balance will not be comparable to each of the last four (4) years; and will constitute approximately 20% of the expenditures.

I find that a significant factor in the City's financial strength has been and continues to be the General Fund unencumbered balances. As a result of the prudent approach by the City's administrator, I have inferred that emphasis in the budget process has been to ensure that sufficient fund balances are available to provide the necessary funding for unanticipated needs of the City. Moreover, in light of its elimination of all debt, the City ensures a satisfactory cash flow.

Thus, it is not surprising that Moody's municipal rating for the City is Aa3, which, as I have previously indicated "demonstrates a very strong credit worthiness relative to other US municipal or tax

exempt issues or issues”. What has been stated also establishes that the City could well afford an increase in wages to Fire Fighters above 1.25% for each of the three (3) years, beginning March, 2012.

II COMPARABLES

The City indicates that the communities in the Northwestern region of Ohio, to which the City “most closely compare”, are: Perrysburg Township, Maumee, Sylvania Township, Bowling Green and Oregon. The hourly starting pay for City “Fire Fighters/Paramedics” is \$17.48 which is substantially below Perrysburg Township at \$19.76 and Maumee at \$21.66. When compared to the “comparable communities”, referred to by the City, the ending pay of the City’s Fire Fighters, except for Maumee, is close to the top hourly pay.

The problem with merely providing data on the top pay of a City is that it does not indicate the number of years it takes to reach the level of maximum pay. For example, the City’s unit employees have a starting pay of \$45,448 – among various communities located in northwestern Ohio and various other communities in Ohio selected by the Association (including Avon, Rocky River,

Twinsburg and Mayfield Heights). The ending pay for the City's unit employees which takes "10+ years" is substantially longer to attain than the other communities referred to by the Association.

I agree with the City's argument that the Association has "cherry picked" communities within the State which would reflect that the City's unit employees do not compare favorably with these communities. However, the City's selection of cities within the northwestern area of Ohio is also vulnerable to challenge. As the City acknowledges in its Basic Financial Statement for the year ending December 31, 2010, the City has fared relatively better than the lagging regional economy". Moreover, the City acknowledges in its Basic Financial Statement that it had managed to weather the most devastating effects the economic storm has levied upon its neighbors * *."

In light of the City's admission and its observations of its closest neighbors, I find it unreasonable that the "closest neighbors" should be used as a criterion in considering the wages to be paid to Fire Fighters. I do not believe that the unit members should be relegated to a certain wage level, because cities closeby have not been able to weather the financial crisis of 2008.

The City cannot be considered victimized by its own success. Nor should the wages of the bargaining unit be measured by Fire Fighters of public employers who for various reasons have not done as well as the City. In light of the City's relative prosperity during these harsh economic times, the wages of the bargaining unit must be measured by comparables of public employees within and not outside of the City.

I have carefully reviewed the data submitted by the parties with respect to SERB's Annual Wage Settlement Report listing comparisons between "Regions," "Jurisdiction", "Unit Type" and "Contract Year". I find the wage settlements meaningless because it lacks any detail with respect to the categories used for comparisons.

In light of these facts, the City is an anomaly. In its "Basic Financial Statement", for the year ending 2010, the City acknowledges that "throughout the recent economic downturn, the City has been able to maintain its current level of services without any significant budgetary changes". There was steady growth of income tax collections, including an increase of 6% over 2009. The City acknowledges that "these figures reflect a continued trend to fare relatively better than the lagging regional economy".

In this case, I have decided that in establishing a criterion for considering a wage rate for Fire Fighters, it is best to look at the City's wages for Police. There is no correlation between the skill, education and training of Fire Fighters, who are required to be Paramedics and the Police. But both the Police and Fire Fighters are involved in hazardous occupations and for budgeting and classification purposes, are located within the Department of Public Safety. They are represented by different Unions.

The City and Association both referred to the wages of the Police in considering the issue of wages for Fire Fighters. In support of its position, the City alludes to the "previous three-year contract", in which the unit employees "received a 0% increase in 2009, a 6.25% increase in 2010 and a 1.75% increase in 2011." The City goes on to state that "Locally, such an increase is unprecedented for contracts negotiated after 2008"; and the increase exceeds the state average and places the unit at the top of the scale for total compensation increases negotiated over the usual three year period".

It should be noted, however, that the increases were awarded in conciliation. Moreover, as the Association pointed out, the City had proposed a wage freeze during negotiations over the wage re-opener in late 2009 and indicated that no adjustments in wage rates would be

given to other municipal employees. The Association states that the City did not act in good faith during the wage re-opener negotiations because after fact finding, the City agreed to a fact finder's recommendation of 2% increase to the Police and wage increases to other City employees averaging 2.45%. It is significant that in contract negotiations the City has agreed to a 1.75% increases in 2012 and in 2013 for Police plus annual lump sums of \$2,200 for elimination of roll call time. Between 2006 and 2011 the Fire Fighters have received a total of 16.5% increase in wages while Police have received a total of 17% plus additional lump sum payments.

Finally, on the issue of wages, since 2006, it bears repeating that the City has carried a fairly high financial cushion each year of unencumbered fund balances which constitute a high percentage of expenditures: \$2,705,316 – 22% in 2006; \$3,495,379 – 27% in 2007; \$3,737,219 – 19% in 2008; \$2,999,180 – 17.5% in 2009; \$3,462,090 – 20.5% in 2010 and \$3,948,103 – 21% in 2011.

Furthermore, in 2008, \$5,900,000 was transferred from expenditures to the Capital Improvements Fund; in 2009, \$3,500,000 was transferred to the Capital Improvements Fund and in 2010 and 2011, \$3,000,000 was transferred to the Capital Improvements Fund.

Based upon this pattern of transfers, the City appears to have established a priority for using unexpended available funds on capital improvement projects rather than compensation. Parenthetically, the monthly income tax collections for the first three (3) months of 2012 are similar to the first three (3) months of 2011.

RECOMMENDATION

I recommend that the Association's unit members are to receive the following increases in wages based upon the current pay matrix: 2.75% in 2012; 2.50% in 2013 and 2.50% in 2014.

Based upon the proposals submitted by the parties, and the data supporting their proposals, it is the judgment of the Fact Finder that the recommendation is both fair, modest and equitable, consistent with good conscience, sound judgment and good labor relations.

II

DURATION OF AGREEMENT

The City seeks a wage-re-opener in the third year of the contract. The basis for doing so is the uncertain state of economy which, in effect, makes it difficult for the City to predict its economic condition in two (2) years.

The Association claims that a wage re-opener in 2014 leads to an expenditure of time and expense for the parties which should be avoided.

RECOMMENDATION

I have concluded that a wage re-opener in 2014 is not recommended.

Since 2008, the parties have been resorting to the dispute resolution procedures of SERB. A wage re-opener encourages either party to turn to such procedures when the bargaining becomes difficult.

Moreover, the City acknowledges that the City is continuing a trend of steady growth. The City has eliminated all of its debt. In addition, the City's revenues from income tax collections in 2012 are running approximately similar to the amounts received in 2011. Accordingly, I believe that the interest of stable labor relations is best served by recommending a three year contract without a wage re-opener.

III

R.C. §4117.14 (G) (11)

R.C. §4117.14(G) (11) provides as follows;

“(11) INCREASES IN RATES OF COMPENSATION AND OTHER MATTERS WITH COST IMPLICATIONS AWARDED BY THE CONCILIATOR MAY BE EFFECTIVE ONLY AT THE START OF THE FISCAL YEAR NEXT COMMENCING AFTER THE DATE OF THE FINAL OFFER SETTLEMENT AWARD; PROVIDED THAT IF A NEW FISCAL YEAR HAS COMMENCED SINCE THE ISSUANCE OF THE BOARD ORDER TO SUBMIT TO A FINAL OFFER SETTLEMENT PROCEDURE, THE AWARDED INCREASES MAY BE RETROACTIVE TO THE COMMENCEMENT OF THE NEW FISCAL YEAR. THE PARTIES MAY, AT ANY TIME, AMEND OR MODIFY A CONCILIATOR’S AWARD OR ORDER BY MUTUAL AGREEMENT.”

The parties disagree over the interpretation and application of R.C. §4117.14 (G) (11). The Association proposes language which provides for a limitation imposed upon a Conciliator when an

increase in wages and other matters with economic implications are awarded in the same year the Conciliator is appointed. The City is unwilling to agree to such a proposal. The City argues that removal of the limitation would usurp the authority placed upon the City's elected officials by the legislature.

The Association claims that in 2009 the City used the statutory provision in a manner which was not intended by the State legislature. The City rejected a Fact Finder's report, which recommended increases of 3.25% and 3.0% in 2009 and 2010. The City rejected the Association's request to waive the limitation in the statute concerning the award of a wage increase in 2009. As a result the Conciliator was without jurisdiction to award a wage increase in 2009.

Before the Conciliator, the Association therefore proposed a zero increase for 2009 and a 6.25% increase in 2010. The City proposed a 2.75% increase, retroactive to March 1, 2009 and a 2.75% increase for 2010.

After the Conciliator sustained the position of the Association, the City refused the Association's request to split the 6.25% increase between 2009 and 2010. According to the Association, the City used the threat of losing a wage increase for a year (2009) to

influence the Association to accept the lower wage increases (2.75% for each year) proposed by the City.

When the Association went forward with conciliation, the Association claims that the City invoked §RC 4117.14 (G) (11) so as to influence the Conciliator that the 2.75% for each year is more reasonable than a zero per cent increase for 2009 and a 6.25% increase for 2010. The City was willing to pay a retroactive wage increase only if the Conciliator sustained its proposal of 2.75% increase for 2009 and 2010.

In light of this experience, the Association indicates that the legislative intent behind (G) (11) is to protect public employers from the imposition of financial onerous back pay awards when a Conciliator awards an increase long after the collective bargaining agreement has expired. I find nothing in the express language of the statutory provision which supports the Association's interpretation. Based upon the express language of (G) (11), I have concluded that Conciliator awards with cost implications will ordinarily take effect at the start of the fiscal year.

In addition, I do not believe it is within my province as a Fact Finder to recommend a contractual term in the Agreement which is at variance with the statutory provision should a Conciliator, in the

future, issue a decision that increases wages or has other cost implications.

RECOMMENDATION

The Association position is rejected. Based upon the express language of R.C. 4117 (G) (11) the City's position is sustained.

CONCLUSION

In making the recommendations on the unresolved issues between the parties, the Fact Finder has considered the factors set forth in Ohio Revised Code, §4117.14 (G) (7).

“(1) Past collective bargained agreements, if any, between the parties;

(2) Comparison of 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;

(3) The interest and welfare of the public, and 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;

- (4) The lawful authority of the public employer;
- (5) Any stipulation of the parties; and
- (6) 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”.

Dated: July 25, 2012
Cuyahoga County
Cleveland, Ohio

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