

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:	:	
	:	
Ohio Patrolmen's Benevolent Association	:	12-MED-04-0400 and 12-MED-04-0401
	:	
and	:	FACT FINDING REPORT
	:	FINDINGS AND RECOMMENDATIONS
	:	
The City of Stow	:	December 12, 2012
	:	

APPEARANCES

For the Union:

S. Randall Weltman, Attorney
Barry Smith, Patrol
Tim Reiheld, Patrol
Steven Dunton, Sergeant
Anne Stirm, Lieutenant

For the Employer:

James P. Wilkins, Attorney
John Earle, Director of Budge & Management
Michael Miller, Director of Public Service
Dino Sciulli, Executive Vice President, Dorman Sciulli Advisors

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Fact Finder
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I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on October 2, 2012, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period as provided under Ohio Administrative Code Rule 4117-9-05(G) until December 11, 2012. The parties are the Ohio Patrolmen's Benevolent Association (Union or OPBA) and the City of Stow (Employer or City). The City is a suburb of Akron, in eastern Summit County, and adjacent to Portage County. It is primarily a residential community with a population just under 35,000. The Union represents the full time police officers of the City, Patrolmen in one (1) unit and Sergeants and Lieutenants in another. The Patrolmen's bargaining unit consists of approximately 30 employees, while there are approximately 10 in the Sergeants' and Lieutenants' unit. The parties agreed to negotiate the separate contracts together in a multi-unit bargaining setting.

II. THE HEARING

The fact-finding hearing was held on December 4, 2012 at the Stow City Hall, 3760 Darrow Road, Stow, Ohio. Each party provided a pre-hearing statement. The Fact Finder initially took evidence to fully understand the parties' positions and then attempted mediation. It was not successful and this report became necessary.

The parties jointly introduced the following exhibits into evidence:

1. 2011-2012 Patrolmen's Unit Agreement between the City of Stow, Ohio and the Ohio Patrolmen's Benevolent Association, Effective Date: January 1, 2011, EXPIRES: June 30, 2012.
2. Sergeants' and Lieutenants' Unit 2011 Agreement between the City of Stow, Ohio and the Ohio Patrolmen's Benevolent Association, Effective Date: January 1, 2011, EXPIRES: June 30, 2012.

Additionally, the parties introduced the following exhibits into evidence:

Employer Exhibits

1. Table 1 - City of Stow General Fund Results of Operations - Actual & Projected.
2. General Fund Carryover Balance - History (Includes Rainy Day Fund) - City of Stow.
3. History of Combined General Fund & Rainy Day Balance - City of Stow.
4. Annual General Fund Surplus or Deficit - City of Stow.
5. Comparative 2011 Yearend General Fund Balances - Area Cities.
- 5A. City of Stow Supplemental Exhibit, Excerpt of Fact Finding Report of Virginia Wallace Curry.
6. History of Capital Improvements Fund Budget, Supplement - Stow General Fund - by Year.
7. Actual Income Tax Distribution, Operating vs. Capital Expenditures.
8. Stow General Fund Revenue - Trend for Major Sources.
9. Stow Major Revenue Sources - Change 2008-2012.
10. General Fund Income Tax Collection Trend - 2005-2012 (Calendar Years) - City of Stow.
11. City of Stow: Income Tax Collection Trend - 1996-2012 - (Amount of Gross Revenue Each Year).
12. City of Stow: Amount of Income Tax Collection Increase or Decrease from Prior Year - 2006-2012.
13. General Fund Income Tax Collection Growth Trend - 2005-2012 Based on Original 2012 Budget.
14. Figure 1. Example of Stow Budget Revenue Gap When Receipts Are Declining.
15. General Fund Local Government Fund Revenue Trend - 2005-2013.
16. City of Stow: Local Government Fund Revenue - 2001-2013.
17. City of Stow Major Annual (Recurring) Operating Revenue Sources - State of Ohio.
18. Cleveland.com article, November 23, 2012.
19. Akron Beacon Journal article, November 15, 2012.
20. City of Stow Principle Employers Current Year and Nine Years Ago.
21. Comparative 2011 Income Tax Receipts Per Capita - Area Cities.
22. Time article, November 26, 2012.
23. Ohio.com article, November 17, 2012.
24. City of Stow Ongoing Budgetary Adjustments Necessitated by Financial Crisis of 2008.
25. Stow Police Department Total Staffing Levels - All Full-Time Sworn Officers.
26. Patrolmen - Comparable Hourly Rates.
27. Police - Area Political Subdivisions, Percentage Increases.
28. SERB Annual Wage Settlement Report, Wage Settlement Breakdown (2002-2011).
29. City of Stow, Table 1 - Fact-Finding, City of Stow and Police OPBA Bargaining Units, City of Stow Contract Base Rate Increases in Comparison to 2011 SERB Survey Increases.
30. Recent History of Stow's COBRA Rates & Employee Contribution Amounts & Percentages.
31. SERB Health Plan Grouping in Ohio - 2012 Report.

32. SERB 2012 20th Annual Report on the Cost of Health Insurance in Ohio's Public Sector.
33. Cleveland.com article, November 20, 2012.
34. Clark Schaefer Hackett November 28, 2012 commentary on fund balances.
35. Dispatch.com article, November 15, 2012.
36. City of Fostoria, Ohio Performance Audit, November 27, 2012.
37. City of Stow Department of Finance Fund Balance Policy Summary - 2012, Capital Improvements Fund.
38. City of Stow Department of Finance Fund Balance Policy Summary - 2012, Combined Group Health Internal Service Funds.

Union Exhibits

1. Conciliation Report, Case No. 05-MED-09-1042-1044, Daniel G. Zeiser, Conciliator.
- 1A. Comparison of 2011 Wages and Benefits for Top Tier or Ten Year Patrolmen in Summit County Cities/Townships.
2. Comparison of 2011 Wages and Benefits for Top Tier or Ten Year Patrolmen in Summit County Cities/Townships.
3. Email to Randy Weltman re Economic Terms for the Hudson Ohio Patrol Officers.
4. Excerpts from Stow 2012 CAFR.
- 4A. Stow 2012 CAFR.
5. Moody's Investors Service Report on City of Stow Bond Rating.
6. Comparison of Health Care Exclusion Components (Summit County).
7. SERB 2012 20th Annual Report on the Cost of Health Insurance in Ohio's Public Sector.
8. Sergeant & Associates Analysis of Financial Condition of the City.

Prior to formal negotiations, the City offered to extend the current contracts for one (1) year. The OPBA rejected the offer. The parties began to negotiate and agreed to bargain solely on wages and health care. They held four (4) bargaining sessions, but were unable to reach agreement. Thus, the only issues before the Fact Finder are wages and health care.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, between the parties;

- (2) 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 consideration to factors peculiar to the area and classification involved;
- (3) 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Introduction

It is not news that municipalities in Ohio have experienced financial difficulties in recent years. The City is no exception. After growing steadily for many years, the City is mostly developed and its population has leveled off. It is primarily residential in character and does not have a large industrial and commercial tax base, though it does have some office, retail, and commercial development. For example, it has

approximately 2.8 million square feet of retail space and 750,000 square feet of office space. Its vacancy rates are typically below that of the Akron Metropolitan area. It has only three (3) private companies that employ more than 200 and eight (8) that employ more than 100. Two (2) of the largest employers are the Stow-Munroe Falls School District and the City itself, both of which have been reducing the number of employees in recent years. For example, the City ended 2011 with 45 full time employee positions eliminated or left unfilled and eliminated 7 part time positions and a number of seasonal ones.

The City's income tax is its principle source of operating and capital improvement revenues, generating more than fifty percent (50%) of general fund receipts and ninety-five (95%) of all ongoing capital improvement funds. Like many Ohio municipalities, the lingering effects of the financial crisis and recession have resulted in declining tax receipts. Income tax receipts have remained essentially flat since 2008 and property and estate tax revenues have declined. The Ohio legislature has eliminated the estate tax beginning in 2013, so all municipalities will lose that source of revenue. Additionally, Ohio has drastically cut the local government fund, which provides revenue to various governmental entities, due to its own budget issues. Finally, given that interest rates are at historic lows, investment earnings have declined. As a result, four (4) of the five (5) revenue sources for the City have declined, while income tax receipts have remained stagnant. Income tax receipts, however, make up the lion's share of revenues, equaling more than half of general fund revenues.

There is some good news. It must be noted that actual income tax receipts for 2012 should come in \$300,000-400,000 higher than forecasted. The national economy

continues to grow, though at a small rate, and Ohio's economy has done better than the national economy in recent years. In short, the City cannot, and it must be noted that it has not during the negotiations and the hearing in this matter, claim an inability to pay. Rather, the City contends that it must keep its cost and any increases to a reasonable level until its financial condition recovers. The Union does not disagree with the City's position. It only disagrees as to what constitutes reasonable increased costs.

Issue: Article XV, Rates of Pay

Position of the Union: Wage increases of 2.75% effective January 1, 2012, 2.5% effective January 1, 2013, and 2.25% effective January 1, 2014.

Position of the Employer: A one-time lump sum equal to .73% of each police officer's annual base compensation delineated in Section 15.01 as of January 2010, not including longevity pay or other non-base pay, effective December 21, 2012; an increase of 1.25% effective January 1, 2013; and an increase of 1.125% effective January 1, 2014.

Findings: The OPBA argues that the City has sufficient funds and revenues to pay the increases. It points to the general fund and other fund balances to show there are sufficient amounts to pay an increase. It submitted an accounting analysis to show the City had \$6,323,000 available to pay for operating expenses. However, this analysis included the City's \$1,000,000 rainy day fund. The evidence at the hearing established that the rainy day fund is included in the general fund balance, so it appears this amount should not be included. Even so, this would leave over \$5 million dollars for operating expenses, using the OPBA's analysis.

The City counters that the Government Finance Officers Association (GFOA) recommends that municipalities should maintain an unrestricted fund balance of no less than two (2) months of regular general fund operating revenues or general fund operating expenditures, that is 16.67%. The State of Ohio Auditor fund balance guidelines provide that, when a general fund balance carryover falls below 8.33% for two (2) years, a municipality enters fiscal watch condition. Its cash balance at the end of 2011, i.e, the carryover for 2012, was \$4,174,785 or 19.33% of general fund expenditures. This puts it slightly above the GFOA recommendation. Compared to area cities, this places Stow at the bottom in terms of carryover balances. The City has projected a deficit of \$693,097 for 2012, although income tax collections have been \$300,000-400,000 better than budgeted. It projects a deficit of over \$1 million for 2013. However, Budget & Management Director John Earle testified that the City will reduce this through cost cuts, transfers from other funds, and tax receipts that are better than projected. Even so, in four (4) of the last five (5) years (including 2012), the general fund will be at a deficit, with 2013 projected to be another. The City has also helped the general fund's bottom line by transferring money from the capital improvement fund. It has transferred \$1 million in 2009, \$1.05 million in 2010, \$980,000 in 2011, and an expected \$800,000 for 2012. These funds would normally be spent on road repair and other improvements. The City submits that it cannot continue to do so as road repairs will be necessary.

Using the OPBA's accounting analysis, a one percent (1%) increase equals \$41,322, when factoring in wages, pension, medicare, and workers' compensation costs. Two percent (2%) would cost \$82,644 in 2012. An additional two percent (2%)

for 2013 would cost \$165,288, and another two percent (2%) for 2014 would cost \$247,932. The total three (3) year cost of the Union's proposed increases would be \$495,864. Further, these are not the only bargaining units with the City. The OPBA represents the Dispatch unit with approximately 15 employees, the International Association of Firefighters (IAFF) represents the Fire unit with approximately 51 employees, and the American Federation of State, County, and Municipal Employees (AFSCME) represents various City employees with approximately 42 employees in the unit. These contracts are also ready to be negotiated and this negotiation will set the pattern for the other units. It would not be unreasonable to assume that the City would give these same increases to its non-bargaining unit employees. There are approximately 23 non-bargaining unit employees and 34 Stow Municipal Court employees. Similar increases to an additional 165 or so employees would likely result in total costs over three (3) years of approximately \$2 million.¹ Given the City's projection of general fund deficits, an additional \$2 million is not reasonable.

Additionally, the evidence showed that current increases for all cities in Ohio and all police bargaining units in Ohio were below one percent (1%) in 2011. The average wage increase for all wage settlements in Ohio was also under one percent (1%). The Union's evidence demonstrated that the bargaining units' wages and total compensation are in the middle of the pack of Summit County cities and townships. The increases offered by the City would keep the units in roughly the same position compared to these jurisdictions.

¹ The parties did not calculate this cost. The Fact Finder has attempted a crude calculation based on the evidence provided.

However, the economy continues to improve and, by the beginning of 2014, the City's finances should improve. Tax collections were down in 2010, but rebounded in 2011. In 2012, they are \$300,000-400,000 better than projected. Given the improving economy and falling unemployment rate, revenues for 2013 are promising.

Recommendation: The Fact Finder recommends a \$750 lump sum for 2012, a 1.5% increase effective January 1, 2013, and a 1.75% increase effective January 1, 2014.

Issue: Article XIX, Hospitalization, Dental and Life Insurance

Position of the City: For 2013, monthly premium contributions increased to 8.4% of the COBRA rate for family coverage, with single coverage at half the family rate. Maximum contributions would be capped at \$100 for family coverage and \$50 for single coverage. A spousal exclusion would be created, so that working spouses who have coverage provided through their employers would be required to take such coverage or pay an additional premium of \$75 per month on behalf of the spouse.

Position of the OPBA: Add a prescription rider to allow employees to purchase prescriptions at the following rates: Generic - \$5.00, Formulary - \$20.00, Non-formulary - \$30.00. Effective January 1, 2013, increase co-insurance and maximum out-of-pocket amounts by \$50.00 and increase monthly premium contribution maximums by \$15.00 for family coverage and \$7.50 for single coverage. Effective January 1, 2014, increase co-insurance and maximum out-of-pocket amounts by an additional \$50.00 and increase monthly premium contribution maximums by an additional \$15.00 for family coverage and \$7.50 for single coverage. Establish a joint health care committee to explore plan alternatives, changes in coverage, and cost containment measures.

Effective January 1, 2013, institute a cash waiver incentive for employees to opt out of the City's health care coverage.

Findings: There is no question that health care costs continue to rise at rates greater than wage rates and inflation. They have risen at double digit rates for years and are projected to continue at double digit rates. The share of the national economy devoted to health care has increased from 7.2% in 1970 to 17.9% in 2010. Between 1999 and 2009, total health care costs almost doubled. As a result, employers' health care costs have continued to rise and they have sought to cut those costs. Understandably, employees want to keep their costs at a minimum. At present, however, employers cannot reasonably be expected to continue to bear the lion's share of these costs. Employees should expect to pay more for health care.

Currently, the bargaining units pay a maximum of \$52 per month in premiums for family coverage. At the City's cost of \$1,358 per month for family coverage, this amounts to less than 4%. According to SERB data, the average public employee in Ohio pays 11.5% of the family premium, while all city employees pay 8.2% and employees of cities with populations between 25,000 and 100,000 pay 8.4%. The City proposes that employees begin paying 8.4% in 2013 and 11.5% in 2014. Given the City's costs, 8.4% equals \$114 (2013) and 11.5% (2014) equals \$156. An increase from \$52 to \$156 in two (2) years is unreasonably large.

The City also proposes a spousal exclusion. The City contends that this is a reasonable method to cut costs. Unlike some plans, employees' spouses have a choice. They can elect coverage from their employers or pay an additional cost for the City's health care plan. According to Dino Sciulli, the City's expert witness, spousal

exclusions began about five (5) years ago with large employers. Most private employers in the Akron area with more than 100 employees have such an exclusion. It saves just under one-half (1/2) the cost of the family COBRA rate. Here, it would save the City approximately \$650 for each spouse with employer coverage. The City claims that, since many employers now have spousal exclusion provisions, employee spouses have an incentive to be included in its plan, raising its costs. Putting spousal exclusion into its plan will offset this incentive and help lower its costs.

Until recently, the Fact Finder was reticent to add spousal exclusion coverage. The evidence, though, demonstrated that such exclusions have increased dramatically from 2011 to 2012. In 2012, 45% of employers statewide have spousal restrictions, with 50% of cities having them, up from 18.7% in 2011. The group with the least such restrictions is counties, at 24.7%. In short, at least one-fourth (1/4) of any employer group has these restrictions. Considering this, the Fact Finder is more receptive to adding such an exclusion. While the OPBA suggests adding an incentive for employees to opt out of coverage, this does not help the City cut costs. In fact, it adds to its costs. It would require the City to pay employees who opt out and gives an incentive for those employees who do not use health care to opt out. Both would increase the City's costs.

Recommendation: Effective January 1, 2013, monthly premium contributions are to be increased to 8.4% of the COBRA rate for family coverage, with single coverage at half the family rate. Maximum contributions would be capped at \$90 for family coverage and \$45 for single coverage. Effective January 1, 2014, monthly premium contributions will remain at 8.4% of the COBRA rate for family coverage, with single coverage at half the family rate. Maximum contributions would be capped at \$105 for family coverage and

\$52.50 for single coverage. The Fact Finder also recommends a spousal exclusion, so that working spouses who have coverage provided through their employers would be required to take such coverage or pay an additional premium on behalf of the spouse. The additional premium will be \$150 per month for any employee hired after January 1, 2013. Effective January 1, 2014, the premium is to be \$50 per month for those employees hired prior to January 1, 2013.

Dated: December 12, 2012

A handwritten signature in blue ink, appearing to read "Daniel G. Zeiser".

Daniel G. Zeiser
Fact Finder