

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

In the Matter of Fact-finding Between:

City of Bay Village : Case No. 12-MED-11-1318
Cuyahoga County, Ohio

and : Recommendations

Bay Village Fire Fighters : Margaret Nancy Johnson
IAFF, Local 1144 Fact-finder

Appearances

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Statement of the Case

In compliance with Ohio Revised Code Section 4117.14(C)(3), the State Employment Relations Board, hereinafter "SERB," appointed Margaret Nancy Johnson to serve as a fact-finder in a bargaining impasse between the City of Bay Village, hereinafter "City," and the Bay Village Fire Fighters, affiliated with the International Association of Fire Fighters, hereinafter "IAFF" or "Union." The parties convened on October 3, 2013 in a conference room at City Hall, Bay Village, Ohio to conduct an evidentiary hearing on the issues in contention. Prior to the hearing both parties timely submitted statements for review by the fact-finder setting forth issues in dispute and the respective positions of the parties. Unable to reach agreement through mediation, the fact-finder received documentary evidence into the record and heard testimony and arguments on the matters under review. By Agreement, these recommendations are electronically issued to the parties and to SERB this 31st day of October, 2013.

With a population of approximately 15,500, the City of Bay Village is one of the geographically smaller, outer suburbs of the City of Cleveland, in Cuyahoga County, Ohio. Located on Lake Erie, it is principally a residential community having businesses supportive of a local economy (See Union Exhibit 4, p.16). Presently, fire prevention and suppression is provided by a bargaining unit consisting of twenty-one (21) Fire fighters, including Fire Captains and Fire Lieutenants. The City is in the process of filling several vacancies due to retirements and resignations.

By an Addendum expiring on December 31, 2012 (Union Exhibit 2), the parties extended a 2010-2011 Collective Bargaining Agreement (Union Exhibit 1), negotiating a 1.75% wage increase effective May 1, 2012, and setting forth hospitalization and health care contributions. Included within the extended Agreement between the parties is an October, 2010, Letter of Understanding relating to Staffing, in which the City agrees that the "normal complement of the Fire Department shall consist of 26 bargaining unit employees" and that the City will fill a permanent vacancy in the unit within one hundred twenty (120) days (See Union Exhibits 1).

Negotiations for this successor Collective Bargaining Agreement occurred in the context of two arbitrations, both of which have been submitted for review and which are more fully discussed hereinafter. Union proposals on health care provisions and the Side Letter emanate from the arbitration decisions rendered.

When the City unilaterally modified the health insurance plan effective March 1, 2013, the Union grieved implementation of the changes to the plan. In an Award dated August 26, 2013, Arbitrator Nels Nelson directed the City to “rescind any changes in the health insurance plan effective March 1, 2013 which are inconsistent with the plan features set forth in Article XIX.” He further directed the City to compensate employees who paid more for their health care under the new plan than they would have paid under the old plan. Employees receiving greater benefits under the new plan were also directed to reimburse the city for the “extra health care benefits.” For the purpose of implementing the award, Nelson retained jurisdiction over the dispute.

The staffing grievance arose when the City failed to fill a vacancy following the retirement of a member of the bargaining unit, thus reducing the Department to twenty-five (25) fire fighters. On January 12, 2012, Arbitrator Robert Stein denied the grievance expressing the opinion that the language in Side Letter B is not an unconditional commitment to maintain staff at twenty-six firefighters but rather, grants the City staffing discretion and the authority to determine what constitutes a “normal complement.” Subsequently, the staffing level fell even further.

In addition to health care and language in the Staffing Side Letter, wages are an issue in the current negotiations. Proposals submitted by the parties to the fact-finder address these three contractual provisions. Additionally, the Union suggests that by its rejection of the effective dates proposed by the City for both insurance modifications and wage increases, duration is an open and unresolved issue. Even so, the parties are in agreement as to a three year contract and the hearing officer finds the effective dates on the wage and health provisions may be addressed in the recommendations relating to those particular monetary matters rather than as a fourth issue.

Issues

Three unresolved issues are presented to the fact-finder for recommended resolution: 1) Insurance, Article XIX; 2) Rates of Pay, Article XX; and, 3) Staffing, Side Letter B.

Criteria

In submitting the recommendations which follow, the fact-finder has taken into consideration those factors traditionally relied upon by neutrals and those specifically enumerated in Ohio Revised Code Section 4117.14, to-wit:

1. Past collective bargaining agreements between the parties;
2. Comparable wages paid in similar jurisdictions for similar services;
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; and
5. Stipulations by the parties.

Positions of the Parties

I. Article XIX- Insurance

a. City

In presenting its proposals to the Fact-finder, the City endeavors to secure for this bargaining unit the same increases in employee contributions towards health care and the same effective dates for such changes upon which other units within the City have already agreed. These include an employee premium contribution of 8% effective October 1, 2013; 9% effective March 1, 2014; and 10% effective March 1, 2015. Additionally, the City proposes changes to the prescription plan including increases in

co-pays for name brand drugs, effective March 1, 2013, as well as increases in deductibles for single and family coverage and higher out of pockets maximums. Although the changes include increased costs for employees, it also provides enhanced benefits. Finally, the City proposes a Health Care Committee.

Intended to contain costs, the plan proposed by the City reflects modifications and increases to employee costs made by public employers throughout the State (See City Tab 1(a)). Moreover, the proposed City changes are consistent with health care plans negotiated by fire departments in neighboring and comparable communities (See City Tab 1(b)).

The City cites increasing insurance costs and decreasing municipal revenue as further justification for its insurance proposal. Other bargaining units have recognized the need for increased employee participation and this unit should incur the same financial obligations for health care that other City employees experience. For the purposes of health insurance, all employees should have the same level of benefits and the same costs. Rather than one bargaining unit being singled out for differential treatment, all employees should be included in one plan. Consistency in health insurance provisions among all employees is fair and equitable.

In submitting its proposal the City is not endeavoring to obviate the award issued by Nels Nelson any more than the Union is seeking in its Side Letter proposal to negate an arbitration award issued on that issue. As the City has bargained in good faith on these matters, the issues are properly before the fact-finder for a recommended resolution.

b. IAFF

The Union contends that the impasse on insurance provisions must be considered in the context of unilateral changes made by the City which the IAFF successfully grieved and took to arbitration. While the parties had begun to bargain in January, 2013, negotiations ceased when the City implemented increases in deductibles, co-pays, and out of pocket maximums effective March 1, 2013. A grievance challenging the unilateral changes was filed on March 7, 2013 and heard before an Arbitrator on June 18, 2013. In his August 26, 2013 decision, Arbitrator Nels Nelson directed the City to rescind any changes effective March 1, 2013 which are inconsistent with the plan features set forth in Article XIX. The award included compensation for employees who paid more for their health care under the new plan as well as reimbursement to the City for additional health care benefits (See Union Exhibit 15).

The plan proposed by the City places the burden of increased costs solely on employees, while the medical coverage costs of the City will actually decrease. Insurance proposals submitted by the Union maintain the status quo for 2013 as directed by Arbitrator Nelson. Effective January 1, 2014, the IAFF proposes increasing the employee monthly premium contribution to 9%, with caps of \$40 for single coverage and \$70 for family coverage. For 2014, the employee deductible should increase to \$400 for a single employee and \$600 for a family with increases in prescription co-pays for formulary and non-formulary drugs. Effective January 1, 2015, the Union proposes a monthly premium contribution of 10% capped at \$46 for single and \$120 for family coverage.

The Union also asserts that the insurance provisions of the Agreement must be viewed in terms of overall compensation paid to this unit. As a bargain for wage compensation that is considerably less than that paid to firefighters in comparable jurisdictions, this unit has negotiated beneficial insurance provisions by which its members contribute less in insurance. The City proposal negates the underlying balance, requiring employees to pay more for insurance without receiving a comparable increase in wage.

The Union acknowledges that some modifications to the insurance plan are justified. Yet, consistent with the arbitration award already issued, the Union proposes changes effective 2014 and 2015 and places reasonable caps on monthly contributions. These increases are the equivalent of a 2.5%

decrease in salary which must be off-set by a wage adjustment.

II. Article XX - Rates of Pay

a. IAFF

Basing its wage proposal on rates of pay for comparable Firefighters in the area, the Union seeks a 2% increase effective January 1, 2013; 3% effective January 1, 2014; and 3% effective January 1, 2015. When insurance cost increases are taken into consideration, the Union argues the wage proposal of the City reduces this unit's income ranking among thirteen comparable units to second from the last. Indeed, the City proposal provides an overall increase far below the current rate of inflation.

Financial data for the City simply does not justify such a low rating among Firefighters in the region. Not only is the City financially stable, but the suburb has been cited for the superior quality of life enjoyed by its residents. Median household income and home prices in the City exceed median income and values across the State.

Primarily financed by income and property taxes, the General Fund for the City has steadily increased since 2009, robustly recovering from the recessionary period nationally experienced. While the General Fund year end balance in 2009 was \$247,074, by the end of 2012, the year end balance was \$1,180,331, a substantial increase. From 2011 to 2012, the General Fund experienced an increase of \$315,847, with a 5.7% increase in revenue to the General Fund for that same period (See Union Exhibit 4, p. 11). Tax revenue increased \$174,496 from 2011 to 2012.

In 2012, the total net financial position of the City was \$2.13 million. Year end balances reflect increasing revenues into the General Fund as well as decreasing expenditures. For the year 2012, actual revenue was higher and actual expenditures were less than had been budgeted (See Union 4, p. 3). The Union argues that by making budgetary cuts from the General Fund while building substantial fund reserves, "the City is attempting to finance the general operating budget from the pockets of public safety workers" (Union Exhibit 5, p. 3).

Overall, the Fire Department budget for 2013 is 13% less than in 2012 and \$456,000 less than expended in 2009. Fire Department expenditures from the General Fund have declined from 17% to 12% from 2011 to 2012 (See Union Exhibit 6)

A review of the finances of the City indicates that the City can well afford the wage proposal of the Union. As a percentage of the General Fund, costs to maintain the fire department have decreased. Yet, the City has increased expenditures allocated to Parks and Recreation and restored leisure time disbursements at the expense of this safety unit.

b. The City

The City proposes a 2% increase retroactive to the first pay period in July, 2013; 2% effective January 1, 2014 and 2% effective January 1, 2015. These increases are the same as those agreed upon by two other bargaining units with which the City negotiates as well as to the increases granted to non-union employees. Historically the City has engaged in "pattern bargaining," a practice which ensures consistent, equitable treatment of all employees and contributes to positive employee morale within the City.

Fact-finders have agreed that "Patterned bargaining in negotiations is a time tested tradition," (*Summit County Engineer's Office and AFSCME, Ohio Council 8, Local 1032, SERB Case no. 2013-MED-01-0066, p.6 Robert Stein, 2013*). In a Fact-Finding Report involving these same parties, Fact-finder Dennis Byrnes opined that "Absent some extenuating circumstance, a valid pattern will usually be enforced" (*City of Bay Village and International Association of Firefighters, Local 1144, SERB 06-MED-10-1148, 2007, p. 26*). In the case before this fact-finder there are no circumstances which would warrant breaking the pattern that has been established and accepted by other units.

The City has offered to this unit the same incentives to settle that have been granted to the AFSCME and the OPBA units. Thus, a \$150 increase in the uniform allowance or an additional one time “comp day” is deemed a possibility. But the City rejects the wage demands of the Union which the City asserts are neither justified by comparables nor sustained by the financial data.

Analysis of wages paid to firefighters in neighboring jurisdictions indicates rate of pay for Bay Village Firefighters is, indeed, very comparable to that in similar jurisdictions (City Exhibit 2 (f)). Considering 2012 wage settlements published by SERB, the 2% increase offered by the City is greater than averages across the State, whether by region, jurisdiction, or unit.

At the evidentiary hearing, the Finance Director explained that declining revenues necessitate cost containment. State imposed budget cuts in local funding and elimination of the estate tax have resulted in significantly reduced revenues to the City which must be considered when establishing an appropriate wage increase. While income tax revenues have gone up, the increase does not compensate for losses in estate tax and local government funding.

Moreover, the Finance Director testified that the year-end carry over in the General Fund is significantly less than the two month expenditure reserve recommended by the Government Finance Officers Association (See City Exhibit 2(e)). An improved reserve effects the municipal bond rating, ensuring lower interest rates for capital improvements undertaken by the City; and while the City's Aa1 rating is good, it could be better. In order to build up the recommended General Fund carry-over, it is essential for the City to continue its policy of cost containment. The across the board 2% wage increase proposed by the City is an integral element in its strategic planning.

III. Letter of Understanding- Staffing

a. IAFF

The Union seeks to modify the Side Letter on staffing so that the exceptions to “normal” as used in the current letter are specifically defined and set forth. In the proposal of the Union, a normal complement of twenty-six employees shall be maintained unless “the City's actual revenue from the General Fund and Emergency Paramedic Levy Fund combined decreases over ten percent (10%) from the prior year's revenue” with comparisons being made bi-annually; or, “unforeseen emergency circumstances arise that prohibit the City from maintaining normal staffing.” Changes proposed by the Union must be viewed taking into account the 2010 MOU and its subsequent undermining by the City.

In 2010 the Union, concerned with potential staffing cuts, initiated a petition to amend the City Charter by specifying a minimum staffing level for the Fire Department. Rather than have a Charter change, the City agreed to the Letter of Understanding and the Union dropped its petition. Less than one year later, the City reneged on its Agreement by failing to fill a vacancy created by a retirement, giving rise to a grievance processed by the Union. At arbitration, the City contended its reduced revenue stream constituted an abnormal circumstance permitting the City to drop below the agreed staffing level. Arbitrator Robert Stein agreed with the argument advanced by the City and denied the grievance but never defined “normal” as used in the Letter of Understanding, allowing the City to arbitrarily determine normalcy. Subsequently, in July 2012, the staffing level dropped to twenty-two members and its current level is twenty-one, the lowest staffing level since 1976.

Since the 2012 Arbitration Award the General Fund has grown and the City's net financial position has increased substantially. City income tax has increased and approximately \$163,000 has been transferred into a reserve fund. Yet, the City has not returned to its “normal” staffing level of twenty-six. Because the City seems to interpret the arbitration award as a permanent exemption from the LOU reached in 2010, the Union proposes clarifying the language so that it is not susceptible to an arbitrary implementation.

b. The City

The City has attempted to work out a solution to the staffing issue confronting the unit, agreeing to a minimum level of twenty-six if it included part time as well as full time employees. Since the Union has categorically rejected part time staff, the City proposes a limit of twenty four (24). Twenty six (26) full time firefighters are simply not needed and the City should not be required to maintain a manning level that is not necessary.

Twenty-four (24) firefighters have been budgeted for 2013, a staffing level which is sufficient for the fire prevention and suppression needs of the City. Accordingly, the City proposes language which establishes the normal level at twenty-four (24) bargaining unit employees. Additionally, the City proposes filling vacancies created by known retirements within thirty (30) days.

Discussion

While uniform statutory criteria are applicable in every fact-finding in the State of Ohio, the procedure takes place in a context which is fact-specific to a particular public entity and to the particular bargaining unit with which it is bargaining. Geographic location, revenue sources, community characteristics, bargaining history as well as prior contract interpretations, are unique and give rise to the proposals which parties bring to a bargaining table. Recommendations for resolving a bargaining impasse derive from the application of well established principles and legislated mandates as well as from analysis of factual data pertaining to the individual parties involved.

A General Overview

Community Characteristics and Financial Considerations

Geographically, Bay Village is one of the smaller of the western suburbs of the City of Cleveland with a population of about 15,650 (See Union Exhibit 8). While the City points out that its population has declined 3.7% since 2000, it is indisputable that median household income has increased in that same period of time. Population data submitted by the City (See City Exhibit 3(c)) indicates that compared with a median household income in Ohio of \$45,749, the estimated median household income in Bay Village is \$75,827. Similarly, real estate values in the City have increased since 2000 and currently exceed median housing values in Ohio by \$53,293. Located on Lake Erie, Bay Village is an outer suburb which certainly may be considered a more affluent community.

Lacking an industrial base, Bay Village is essentially a residential community, whose principal source of income for its General Operating Fund consists of real estate and income taxes. Like every governmental entity in Ohio, due to the state budgetary cuts, the City is experiencing reductions in revenue from the Local Government Fund and from Estate taxes. Even so, while actual revenue to the General Fund over the last four (4) years is less than General Fund revenue in 2008, the year end balance in the General Fund has steadily increased. In 2008, the year-end balance in the General Fund was \$827,864, compared with \$1,180,331 in 2012.

These year-end increases are to be attributed principally to declines in expenditures. Actual expenditures in 2008 were \$12,160,880 compared with \$11,716,205 in 2012. Finance Director Renee Mahoney testified, "the City is doing more with less." The Union, however, contends the Fire Department is disproportionately incurring the burden of reductions. Whereas disbursements from the General Fund for the Fire Department were \$2,155,451 in 2009, the City has budgeted \$1,336,762 from the General Fund for 2013, a 33.83% decline (Union Exhibits 6, 7).

Approximately 22.55% of Operating Expenses incurred by the City are attributed to the Fire Department which is financed by both the General Fund and an Emergency Paramedic Levy (See City Exhibit 2(d)). In addition to fire suppression for structures throughout the City, the Fire Department also engages in fire prevention (See Union Exhibits 24, 25 and 26), a program which underlies the Union proposal on staffing to be addressed hereinafter in the discussion and recommendation

pertaining to the Side Letter.

In support of its financial positions in these negotiations, the City cites guidelines issued by the Government Finance Officers Association (“GFOA”) for a “reserve target” (City Exhibit 2(e)). GFOA Best Practices recommend that general purpose governments maintain an “unrestricted fund balance in their general fund of no less than two months (16 percent) of regular general fund operating revenues or regular general fund operating expenditures” (City Exhibit 2(e), p. 22). The purpose of maintaining such a reserve is to ensure financial fluidity during periods of “revenue downturns” or “extreme events.” The City contends that currently its carry-over does not meet the recommended “reserve target,” but that its fiscal goal is to grow its reserves so as to improve its bond rating and ensure an ability to borrow for capital improvements with a lower interest rate. Presently Moody's rates the City as Aa 1 (Testimony, Renee Mahoney).

Observing that the recommendation of the GFOA is simply a guideline, the fact-finder notes that in addition to the carry-over, the City maintains \$2,130,000 in funds for capital reserves. Thus, should an “extreme event” occur, the City has resources to supplement the carry-over and options for accessing capital reserves (See Union Exhibit 5, p. 3). Moreover, this particular community has the ability to increase the balance in the General Fund without adversely affecting those essential public services it provides.

While all governmental agencies must manage available funds astutely, employees must also be reasonably compensated for services rendered. In determining what constitutes reasonable compensation, neutrals consider and apply specific criteria established by statute. Evidence elicited in this proceeding establishes that fiscal ability is not a determinative factor. Rather, by analysis of other criteria, the fact finder seeks to determine what may be deemed an appropriate resolution of the financial issues in question.

Pattern Bargaining

Pattern bargaining underlies the economic reasoning and proposals of the City in this proceeding. Because other units with which it bargains have already agreed to the wage and insurance proposals advanced by the employer, the City asserts this unit should be held to the same terms. In support of its contentions, the City introduced a fact-finding report which references pattern bargaining as “a time tested tradition” (*Summit County Engineer's Office and AFSCME, Ohio Council 8, Local 1032, SERB 2013-MED-01-0066, Robert Stein*). Yet, while recognizing the significance of internal equity, Fact-finder Stein cited “statutory criteria” rather than an established pattern as the basis for his recommendations (p.7)

Another Report in which pattern bargaining was thoroughly discussed, including reference to a prior Conciliation award, involves the 2007 fact-finding proceeding between the present parties (*City of Bay Village and IAFF, Local 1144, SERB 06-MED-10-1148, January 2, 2007, Dennis M. Byrne*). While the fact finder therein recognized the concept of internal equity as a “factor...which [is] normally or traditionally taken into consideration,” he also opined that the City still has the obligation to negotiate with each individual unit. Indeed, Fact-finder Byrne unequivocally states in his Report “the fact that the police unit settled their contract” does not mandate “that the firefighters accept the same wage increase because of pattern bargaining” (p. 9).

In the opinion of this fact-finder, once reasonable wages have been established for various units within a governmental entity, percentage increases to those bargaining units should, indeed, be similar. Identical socio-economic factors are applicable to all employees within a single jurisdiction and internal equity should be considered. Such an observation, however, does not negate the need for the parties to engage in good-faith bargaining or the obligation to “meet the strictures of ORC 4117” (*sic*) (p. 9).

Consistency among bargaining units is not the equivalent of uniformity. Even while percentage

increases in wages may be consistent, there are still multiple differences in the economic packages set forth in the Collective Bargaining Agreements negotiated by different units within a single governmental entity. Services provided, hours, working conditions, indeed, composition of the unit itself, differ. Not all units within one jurisdiction have the same bargaining goals or agendas.

In the matter at hand, the other two units with which the city bargains have agreed upon terms or “incentives” not presently before the fact-finder as proposals. The AFSCME unit agreed upon a one time eight-hour “comp” day to be used at the end of the contract. Not wanting a comp day, the OPBA unit negotiated and received an increase in its uniform allowance. Clearly, the “pattern” is not and should not be exact.

Proposals advanced by the City in this proceeding require not only uniform wage increases but also identical effective dates. If the concept of pattern bargaining as argued by the City in this instance were to be accepted by the fact-finder, then the need for the City to bargain individually with all units as statutorily required would essentially be negated and the IAFF should just let another unit bargain on its behalf. In the opinion of the neutral, consistency or internal comparability does not mandate lock-step uniformity.

Past Collectively Bargained Agreements

The concept of pattern bargaining is also problematic in this case because the issue of the health insurance, now before the fact-finder, was the subject of a grievance processed by this unit, and there is presently an arbitration award requiring compliance (See Union Exhibit 15). Certainly, it is not the prerogative of the fact-finder to enforce an arbitration award; but, it is also not her province to nullify the terms of a properly executed award involving these parties. Statutory criteria includes “past collectively bargained agreements.” Surely that must include arbitral interpretations of the terms of prior agreements.

At issue in the arbitration proceeding were unilateral modifications to the health insurance plan which the arbitrator found were not comparable to the old plan as contractually required. In his decision Arbitrator Nels Nelson mandated the City “to rescind any changes in the health insurance plan effective March 1, 2013, which are inconsistent with the plan features set forth in Article XIX” (See Union Exhibit 15). Additionally, the City is directed to compensate employees for additional costs and employees are to reimburse the City for added benefits. While the impact of the August 26, 2013 Arbitration Award on these proceedings will be further discussed when addressing the specific issue of health insurance, the fact-finder notes that the proposal of the City regarding the effective date of its proposed health insurance plan, in effect, negates the remedy set forth by Nelson in his arbitration award on the matter.

Past collectively bargained agreements and the effect of arbitral rulings on contractual language is also a factor in the differing proposals on the Side Letter regarding Staffing. On October 12, 2010, the parties entered into a Side Letter providing for a “normal complement” of twenty-six (26) firefighters. When manning had dropped to twenty-five (25) firefighters and the City was not filling the vacancy within the 120 days as set forth in the Letter of Agreement, the Union filed a grievance and processed the same to arbitration. In a decision rendered January 17, 2012 Arbitrator Robert Stein denied the grievance in its entirety on the basis that the plain meaning of “normal complement” does not constitute an “unconditional commitment” to maintain twenty-six firefighters (See City Exhibit 3(a)).

At fact-finding, the City suggested that the Nelson and Stein rulings are on the same footing in these contract negotiations. Just as the Union is seeking to change language on Staffing, the City proposes changes to Health Insurance, the contractual language of both provisions having been issues in arbitration proceedings. In the opinion of the fact-finder, there are significant differences in the two instances, the principal one being that the Nelson decision involves an award with which the City has yet to comply. While it responds to the Stein ruling, the Union proposal on the Side Letter does not

require the fact-finder to negate the arbitration award.

On the contrary, having lost at arbitration, the Union now seeks to remedy in negotiation the language giving rise to the initial dispute. One of the purposes of collective bargaining is to correct imperfections in expression which only become apparent in practice or implementation. That is exactly what the Union is trying to achieve by this contract proposal. While the Union proposal prospectively addresses the Stein ruling, it does not in any manner retroactively modify the decision. The City proposal on health insurance, however, goes back in time and, in effect, negates the Nelson decision and award.

Specific Issues

I Article XIX Insurance

There are two components to the insurance provisions now in contention: 1) starting date for the Prescription and Insurance Plan, including co-pays, out-of-pocket maximums, and deductibles; and 2) employee contributions to the insurance premiums. In the opinion of the fact-finder, the adjustments under consideration can and should be reviewed separately. There is no compelling reason why the differing proposals on plan changes and employee premium contributions need to be analyzed as a single issue. Rather, fact-finding is an opportunity to compromise, choosing from several differing options in an endeavor to attain an acceptable result.

a) Prescription and Insurance Plan and Hospitalization Deductibles

As previously stated, this fact-finder will not negate an arbitration award which has yet to be implemented. In his decision Arbitrator Nelson specifically directed rescission of changes made to the insurance plan effective March 1, 2013. The City now proposes that those changes be made retroactive to March 1, 2013, effectively vacating the Nelson award and the requirement that the parties engage in negotiations, including impasse procedures on changes to current contract language. This neutral will not use fact-finding to thwart an arbitration award addressing unilateral changes in contract language or the statutory obligation to negotiate such changes.

In its presentation, the City explained its unilateral mid-term adjustments as the result of not receiving adequate notification of plan changes until just prior to the renewal period. Although the fact-finder understands the good faith motive of the City in this matter, plan adjustments do not justify unilateral modifications to negotiated benefits. Parties bargain health insurance language understanding that the status quo regarding insurance may change mid-term. To address such potential mid-contract alterations, degrees of flexibility are written into an Agreement. In his decision, Nelson found that in the matter of benefit changes before him for consideration, the City had exceeded the negotiated flexibility and the changes were not comparable to current benefits.

While accepting the basic *changes* in the plan, including co-pays and deductibles, the Union rejects the retroactive effective date and proposes increasing co-pays in a two step process, accepting the City proposal on co-pays and deductibles but making the effective date January 1, 2014. The City proposal is to make changes to prescription coverage and hospitalization deductibles effective March 1, 2013. Firefighters “reluctantly accept the plan changes (increased deductibles, max out-of pocket, co-pays, etc.)” but propose the changes be “effective January 1, 2014” (Pre-hearing statement p. 9). Basically, the Union contends it is not required to accept the starting date for plan changes to which other units have agreed.

Because two other units have agreed to an effective date of March 1, 2013 for the changes in the insurance plan, the City argues this union should do the same. The IAFF rejects the proposition that it should be bound by effective dates negotiated and agreed to by other bargaining units. This fact-finder concurs, and while the insurance plans affecting all employees should, indeed, be comparable, the effective dates of those plans do not need to be exactly the same. Nothing in the evidence elicited

suggests that administratively the effective dates must be uniform or that implementation by the City of the Nelson award is not feasible.

Because parties negotiate at different times, contractual settlements reached by different bargaining units frequently have effective dates that are not consistent. Accordingly, the fact-finder recommends that the effective date for the plan changes for this unit be made to coincide with the effective date of changes to employee contributions, as discussed below, **October 1, 2013**.

b) Employee premium contributions

The second component of the insurance proposals addresses increases in employee contributions to insurance premiums. Again, while the Union accepts in principal that the bargaining unit must accept increasing employee contributions to health insurance premiums, it now seeks to modify the effective date of those changes and to negotiate a cap on the amount which may be required.

As to the cap, the fact-finder concurs with the City that consistency among employees generates labor peace and good will among those employees providing a variety of services to the community. Thus, the amount of the employee contribution should be uniform, with all employees making the same contribution to health insurance, at least for the three year duration of the Agreement. Pursuant to the City proposal, all employees contribute 8% effective October 1, 2013; 9% March 1, 2014 and: and 10% March 1, 2015.

The fact-finder is of the opinion that there is no justification for this unit to be treated differently in terms of either the employee contribution or the effective date. Accordingly, she recommends the City proposal for changes to Article XIX, Section 19.01

II Article XX Rates of Pay

Extensive evidence regarding the financial status of the City has been elicited by both the Union and the City. The City argues that costs must be contained and its General Fund carry over increased to meet exigencies as well as losses and lapses in revenue. For its part, the Union asserts that the City is financially sound, with property values and incomes increasing and that the Fire Department has been targeted for reduced expenditures. As with insurance, the respective wage proposals include differing effective dates. The City offers 2% the first pay period in July, 2013; and 2% increases effective January 1, 2014 and January 1, 2015. The Union proposes a 2% increase effective January 1, 2013 and 3% increases January 1, 2014 and January 1, 2015.

While the City and the Union approach the economic issues from differing perspectives, ability to pay is not the issue in the matter of wages now before the fact-finder. The City certainly has the resources to pay modest increases in rates of pay and a residential core that by choice lives in a community supportive as well as expectant of high standards of service. In this instance rather than focusing on City finances, the fact-finder analyzes evidence elicited in an endeavor to determine what constitutes an appropriate and reasonable increase in wages consistent with statutory criteria other than ability to finance.

Citing bargaining history, the Union contends that the comparatively lower wage to which it has previously agreed, has been offset by a better health insurance plan. By now agreeing to increased health insurance costs, the Union maintains it ought to receive a wage rate that is more comparable to neighboring jurisdictions. Since the unit will be incurring increased costs in health insurance, the wage argument advanced by the Union is that to maintain comparability, its wage proposal is required. In response, the City states that the total economic package offered to this unit is indeed comparable to incomes received by firefighters in similarly situated cities.

While the fact-finder concurs with the Union that wage comparability cannot be considered in a vacuum but must also take into account other benefits and perquisites, she does not agree that wages

paid to this unit are substantially below what firefighters receive in comparable jurisdictions. Data submitted by the Union ranks the City eleven (11) out of thirteen (13) fire departments in terms of compensation (See Union Exhibit 16). Using those cities, the City ranks ninth (9) if insurance expenses are factored (See Union Exhibit 17). In its evidence on comparability, the City cites nine (9) jurisdictions, using some of the same cities, eliminating and adding others, to rank the City in the upper middle.

As pointed out by Fact-finder Byrnes in the 2007 impasse proceeding between these parties, “comparable data sets the bargaining range; it does not determine exactly what individual bargaining units should be paid” (p. 9). Looking at Union and City data, Firefighters in Bay Village certainly are in the “range.” Moreover, the fact-finder observes that Solon, Berea, Brookpark, and Middleburg Heights, cited by the Union, are not truly comparable to Bay Village as each one has a significant commercial or industrial base. When looking at comparable data, demographics (See Union Exhibit 8) are only a component. In addition to a description of the population, the fact-finder should consider industrial enterprise, revenue sources, and business development. While the cities cited above are comparable in terms of population, Bay Village is exclusively residential, lacking in either industry or significant interstate commerce.

In the opinion of the fact-finder, external comparability does not mandate the increases sought by the Union. Emerging from both a national recession and extraordinary budget reductions implemented by the State of Ohio, public employers state-wide have negotiated modest wage adjustments. In 2012, wage increases have consistently been less than 2% for all regions, entities, and services (See City Exhibit 2(e)). Available data on recent percentage wage increases sustain the City position on the percentage wage increases.

When evaluating wage proposals, fact-finders typically consider internal parity as a factor. In the case at hand, the City has been uniform in the percentage wage increase provided to its employees. Absent justification for differentiating this unit as to wages, the hearing officer sustains the 2% wage increase proposed by the City for 2014 and 2015.

As with the insurance provisions, however, the fact-finder does not believe that effective dates for contract provisions need be uniform. A number of factors determine effective dates but these are generally consistent throughout successive agreements. Except for the 2012 Addendum, it would appear that wage settlements between these parties have, in the past, had effective dates in January (See Union Exhibits 1, 2 and Byrne Fact-finding Report, January 2, 2007).

Moreover, because of perquisites within the economic packages negotiated by the other bargaining units, this Union should not be bound by a July, 2013 effective date for the first year wage increase to take effect. Both the AFSCME and the OPBA units received economic incentives this unit is not receiving. Neither an increased clothing allowance nor a “comp day” has been presented to the fact-finder as part of the City proposal. Thus, there is justification for the retroactive date for this unit to differ from that of the other units. In the opinion of the fact-finder, the effective date for a 2% increase for the first year of the contract should, as argued by the Union, be January 1, 2013.

Accordingly, the fact-finder recommends a 2% increase effective January 1, 2013; a 2% increase effective January 1, 2014; a 2% increase effective January 1, 2015.

III Memorandum of Understanding – Side Letter B - Staffing

Perhaps the most contentious issue between the parties is the language set forth in a Memorandum of Understanding which, like the Insurance changes, was the subject matter of a grievance taken to arbitration by the Union. Having lost at arbitration, the Union now seeks to change language in the staffing side letter. Current language provides a “normal complement” of twenty-six (26) bargaining unit employees and an obligation to fill permanent vacancies within one hundred and twenty (120) days. When the staffing level fell to twenty-five and the City failed to fill vacancies within the

contractual time limit, the Union grieved. The Arbitrator hearing the case determined that the term “normal” granted the City discretion to unilaterally reduce staffing.

In its proposal, the Union now seeks to define the word normal on the basis of revenue declines in both the General Fund and the Emergency Paramedic Levy Fund, or an unforeseen emergency circumstance that prohibits the City from maintaining normal staffing. Responding that it does not require 26 full time firefighters, the City proposes reducing the staffing complement to twenty-four (24) firefighters, the number for which funding has been budgeted.

Clarity certainly is an objective in contract negotiations and given the variations in what may be deemed “normal,” the fact-finder believes the word “normal” lacks the definitive precision required of contract language. Rather than attempting to define the term, however, the fact-finder recommends that it should simply be deleted from the Side Letter.

Of concern to both parties in these proceedings is not so much the term normal, as is the required staffing level. Most of the argument at fact-finding centered upon the staffing needs of the department, with the Union and the City expressing divergent views of the Fire Department.

In the presentation of its evidence, the Union argues that from 1976 through 2007, the Fire Department included twenty-six firefighters. In the midst of the national recession, plans to further increase the size of the department were scuttled. Until 2012, the Department included a full time Fire Prevention and Safety Officer, responsible for fire inspections in the various businesses, schools, churches, and public properties within the City (See Union Exhibits 20, 22, and 25). When staffing fell to twenty-five in March, 2011, a grievance was filed, and following the award defining “normal,” the level further fell to the current level of twenty-one (See Union Exhibit 23). At fact-finding, the testimony focused on the difficulties encountered when an emergency call is received during a fire inspection as well as the need for the Department to have a full time fire inspector. The Union asserts that even as staffing levels have fallen, emergency runs have increased.

As to staffing, the City now proposes a minimum level of twenty-four. In an endeavor to resolve the staffing issue prior to fact-finding, the City had suggested a part time inspector, arguing that the City simply does not require a full time fire fighter to conduct inspections. While part of prior negotiations, use of part-time employees is not a proposal in these proceedings. As these negotiations are underway, the City is in the process of adding three additional firefighters, to bring the total to twenty-four.

Testimony submitted by the Union pertaining to interruptions in inspections when an emergency call is received was largely anecdotal, with the firefighters alluding to inconveniences and inefficiencies. Specifics, however, as to incidents, losses, or injuries sustained because of reduced manpower were not elicited. Indeed, although for much of 2011, the staffing level was twenty-three (23) or less, there is no evidence of danger to or damage incurred by either the public or the department because of the staff level.

Fire Departments engage in the dual roles of fire suppression and prevention. The purpose of staffing levels is not to effect conveniences in the essential and hazardous work performed, but, rather, to ensure the safety of the firefighters and the public. A Fire Department lacking sufficient manpower creates a danger to those served as well as to those serving.

Documentation or testimony elicited, however, does not evidence exposure to danger by reason of the manpower level of the Fire Department. Nothing in the facts presented to the neutral demonstrates that a twenty-six person Fire Department is required or that the twenty-four person department proposed by the City creates safety concerns.

While emergency runs made by the unit have increased, the staff level in the City is not disproportionate to runs made. In looking at comparable data (See Union Exhibit 8), at least one smaller department (Berea) and several similarly sized departments (Fairview Park, Avon Lake and Middleburg Heights) all made considerably *more* runs than this unit. Based on comparability, then, the City proposal of twenty-four (24) fire fighters appears to be reasonable and appropriate.

Certainly the fact that for more than the past two decades prior to 2011 the City maintained at least a twenty-six person department speaks to prior agreements and practices. Even so, circumstances and conditions change as do terms of a collectively bargained agreement. Improved building codes and safer installations contribute to a reduction in fire hazards; technological advancements increase fire fighting efficiency; and mutual aid agreements attest to greater community co-operation in fire suppression. In other words, 2013 is vastly different from 1976 not only for fire departments but for the communities they serve. While the Union cites increased emergency runs, more telling data would have been the nature of those calls, duration, severity of damage, or the difficulty of existing staff to meet the challenges. Evidence elicited simply does not sustain the necessity of a twenty-six person department.

Data does, however, indicate the need for the City to allocate its resources wisely and effectively. Rising expenses for governmental entities cannot be disputed or ignored. Cost saving measures are being implemented in municipalities throughout the State. Accordingly, based on the evidence presented, the fact-finder recommends a twenty-four person fire department as both an operationally sound and fiscally responsible measure.

Additionally, the fact-finder is of the opinion that staffing levels should be maintained efficiently and promptly when levels drop below twenty-four due to vacancies. Three months or ninety (90) days should be sufficient to fill unexpected vacancies and vacancies due to planned retirements ought to be filled within thirty (30) days.

Having reviewed and considered the evidence on staffing levels, the fact-finder recommends the Side Letter be modified to remove the word “normal” and to modify the staff level to twenty-four (24). Vacancies should be filled within ninety (90) days unless the vacancy is due to a planned retirement in which case it should be filled within thirty (30) days.

Conclusions and Recommendations

1. Article XIX Insurance

19.01 All full time employees may receive hospitalization coverage from the City of Bay Village in its Self-Funded Plan. Effective January 1, 2013, employee health care contributions shall be \$35.00 single/per month and \$70.00 family/per month on a pre-tax basis. Effective October 1, 2013, employees shall contribute 8% of the monthly health insurance premium for either the single or family plan. Effective March 1, 2014, employees shall pay 9% of the health insurance premium for either the single or family plan. Effective March 1, 2015, employees shall pay 10% of the health insurance premium for either the single or family plan. All employee percentage contributions shall be on a pre-tax basis. The Employer reserves the right to change insurers, at its renewal, providing the schedule of benefits is comparable to or better than the existing benefit levels. “Comparable” in this sense shall mean equivalent to or better than the existing benefit levels. However, the plan document for any medical provider shall be the controlling determination for benefits under the hospital insurance for the employees (Hospitals and providers are not guaranteed to be maintained with or without a change in insurers.) The City will make available to employees a Section 125 Health Savings Plan.

Prescription Coverage: Effective October 1, 2013, individuals shall be responsible for a \$10 co-pay for generic prescriptions, a \$30 co-pay for formulary prescriptions and a \$50 co-pay for name brand prescriptions. If a generic is not available the individual is responsible for the appropriate co-pay. An individual will pay the appropriate co-pay when the prescribing doctor has indicated DAW (dispense as written) on the prescription. DAW shall be the doctor's insistence and not as the result of the patient requesting DAW. If a generic is available and the patient has required through the doctor DAW, the

patient is responsible for a \$10 co-pay plus the difference in price between the name brand and the generic. Maintenance prescriptions are available through mail order only at two times co-pay. Covered individuals shall be subject to the prescription plan in effect October 1, 2013.

19.02 Current contract language

19.03 Effective October 1, 2013, hospitalization coverage (network) is subject to annual deductibles of \$400 for single coverage and \$800 for family coverage. Once deductibles have been met, individuals will receive in network coverage of 80%, with the out of pocket maximums of an additional \$1,000 for single enrollment and \$2,000 for family enrollment. Thus, the maximum out of pocket for single health coverage is \$1,400 and for family enrollment \$2,800 per year. The aforementioned maximums include deductibles but do not include monthly contributions, any co-pays relative to office visits, prescriptions, vision coverage, or dental benefits. Out of Network coverage shall remain of 60% with maximum out of pocket limits of \$2,000 single/\$4,000 family, excluding deductibles.

19.04 Current contract language

19.05 The Employer and the Union will establish, as soon as is possible following ratification of a new CBA, a Joint Health Care Cost Containment Committee which will explore and make recommendations on premium costs, health plans, deductibles, out of pocket expenses and co-pays for in-network and out-of-network plans, reinstating or modifying any existing or prior wellness programs in an effort to minimize the cost of health care coverage for both the employer and the employees under provisions established and when implemented by the Affordable Care Act. The Union may have one representative on said committee.

2. Article XX – Rates of Pay

Effective January 1, 2013: 2% wage increase
Effective January 1, 2014; 2% wage increase
Effective January 1, 2015: 2% wage increase

3. Letter of Understanding Side Letter B

The Employer agrees that the complement of the Fire Department shall consist of twenty-four (24) bargaining unit employees (firefighters, lieutenants and captains), with eight (8) employees assigned to each of three platoons. A bargaining unit employee certified in fire inspection may at the City's discretion be assigned to perform fire inspection duties during their shift. A firefighter may also be assigned to the fire Prevention Bureau for light duty when practical, at the discretion of the chief.

When a permanent vacancy occurs, the Employer will fill the vacancy within ninety (90) days except that any planned retirement resulting in permanent vacancies will be filled within thirty (30) days.

In the event the Employer enters into a Regional Fire District or other entity, all existing employees will be guaranteed employment in the District or other entity.

4. All tentative agreements entered into prior to fact-finding are incorporated herein as if fully written and deemed part of the recommendations of the fact-finder.

Respectfully submitted,

/s/ Margaret Nancy Johnson

Service

A copy of this Fact-finding Report has been issued electronically this 31st day of October, 2013, to the Union at Lemmerbrock@mlabor.com; to the City at JBudzik@mggmlpa.com; and to SERB at MED@serb.state.oh.us.