



The Union agreed to two City proposals at the hearing: (1) The new Agreement will be in effect for one year, running from January 1, 2014 through December 31, 2014. (2) Obsolete language relating to detective allowances in Article 15, Section 2 will be deleted. This left four issues to be resolved by the Fact Finder: (1) Article 10, Wages. (2) Article 14, Health Insurance. (3) Article 15, Section 1, Uniform Allowance (amounts). (4) City proposal to delete the Addendum on Scheduling.

At the hearing, witnesses testified, and the parties and their advocates also presented arguments and numerous documentary exhibits directed to these issues. Appearing on behalf of the Union were: Joseph Hegedus, OPBA Legal Counsel; Officer Justin Small, Local Union President, and Officer Craig Griffith, Local Union Vice President. Appearing for the Employer were: Donald L. Crain, attorney, Frost, Brown, Todd; Alex Ewing, attorney, Frost, Brown, Todd; Dody Birch, Assistant City Manager; George S. Perrine, Finance Director; John Sedlak, Chief of Police and Kathy Weisgarber, Human Resources. Jennifer Johns, Assistant Finance Director, joined the hearing in progress.

The Fact Finder has evaluated the proposals and evidence submitted by the parties. His recommendations for resolving the issues are fully explained in the Recommendations Section of this Report, infra. In making his recommendations, the Fact Finder has given consideration to the following criteria prescribed by the Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

- (1) Past collective bargaining 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 interest 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 determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

“Other factors” referenced in criterion no. 6 may include the desirability of consistent and equitable treatment for all of the public employer's employees.

### **FINDINGS OF FACT**

#### **A. City Profile, General Background**

Miamisburg is a middle class suburb of Dayton, located just off I-75 in southern Montgomery County. It is an older community which traces its existence all the way back to a settlement in 1797. During the past twenty years, its population has trended upward. In the 1990's, in part due to territorial annexation, population increased at the rate of 9.3%. Growth continued at a more modest pace 2000-2010, even though Montgomery County's total population declined during the same period. Miamisburg's population was recorded as 20,181 in the 2010 Census.

The City's economy has been in transition during the past two decades. From the late 1940's until the early 1990's, its largest employer was the Department of Energy's “Mound” facility. In 1991, DOE announced that this plant would be decommissioned after environmental remediation. Fortunately, growth and development in other areas have more than offset the loss of DOE jobs. Miamisburg's largest employer now is Kettering Health Network (KHN), which has added more than 1400 jobs since 2002.

Avery Dennison, Miamisburg City Schools, Evenflo and Yaskawa American (Motoman Robotics) are among other major Miamisburg employers. The City continues to work to attract light industrial, retail and service sector employees.

**B. City Finances**

The national recession, which commenced in late 2008, took a toll on revenues of most local governments. Overall, Dayton and Montgomery County fared worse than many areas, due primarily to loss of General Motors and related jobs. Miamisburg was better off than some Dayton-area communities, but still was impacted. The City had an \$588,753 General Fund operating deficit in 2008, leaving a General Fund year-end balance of \$3.76 million (about 25% of revenue). In 2009, the operating deficit was \$1,131,353, and the year-end balance dropped to \$2.64 million (18% of revenue).

Miamisburg responded by taking prompt action on both the revenue and expense fronts. Voters approved an increase in the City's income tax from 1.75% to 2.25% in 2011. On the expense side, the City reduced personnel, in part by regionalizing or privatizing some of its functions. Specifically, it joined Montgomery County's Regional Dispatch Center, thus eliminating its own dispatch operation. It is achieving economies of scale by consolidating fire protection services with Miami Township, forming the Miami Valley Fire District in May 2012. More recently, it outsourced its refuse operation to a private company.

These actions have stabilized and improved the City's finances. Moreover, Miamisburg is participating in the nation's very gradual recovery from the recession. Income tax receipts, the principal source of General Fund revenue, are up.

However, the gains in income tax revenue have been partially offset by losses in revenue from other sources. Ohio has abolished its estate tax, which generated \$684,095,

\$480,193, and \$283,500 in 2011, 2012 and 2013. Local Government Funds from the state have been cut, and the City's LGF funds dropped from \$540,080 in 2011 to \$300,000 in 2013. Personal property tax has been reduced, and state utility tax reimbursement has been eliminated. Finally, due to historically low interest rates, interest earnings have dramatically and steadily fallen for the past decade. This had a particular impact on Miamisburg, as the City is fortunate to have several million dollars which was placed in a trust after sale of a municipal utility in the 1960's. Though the money cannot be directly accessed, it once generated substantial interest income.

Nevertheless, due to the tax increase and the expenditure reductions, the City's finances remain stable, at least in the near term. Revenues exceeded expenses in 2012 and 2013, and the City expected a December 2013 General Fund balance of \$5,591,475 (30% of revenue). Without wage increases, the City projects that operating expenses and revenues will be close to break-even in 2014, and predicts a 2014 year-end balance of \$5,526,315 (29% of projected revenue). The 2013 and projected 2014 balances represent a big improvement over the City's 2009-2010 balances. They also exceed the City's target of having a balance equal to at least 25% of revenue.

Longer term, the City expressed major concerns about pending legislation that would regulate income taxes imposed by local governments. The legislation, H.B. 5, has passed the Ohio House and will be debated in the Senate this year. It includes a provision which would allow a 5 year net operating loss carryforward for businesses and self-employed individuals. Miamisburg's local income tax currently does not permit such a loss carryforward, and the City Finance Director believes that it could cost the City as much as \$500,000 to \$750,000 in lost revenue on taxes now collected on net profit. However, the legislation has not been passed by the Senate. If passed, it would not be

effective until 2015, and there is still a chance that the final bill will not include the threatening loss carryforward provision. Moreover, that provision as currently written would be phased in gradually from 2017 to 2022 – that is, the City would not feel the full effect of the projected \$500,000 - \$750,000 revenue loss until 2022.

**C. Recent City Wage History**

The City currently employs police officers and sergeants represented by the OPBA in two separate bargaining units; service workers represented by the Teamsters; and various non-union supervisory, administrative and support personnel. Until 2012, it also directly employed firefighters represented by the IAFF.

With minor variations, each of these groups generally received the same percentage wage increases in recent years. Thus, when police patrol officers and dispatchers negotiated 3% wage increases effective July 1 in 2006, 2007, 2008 and 2009, the other groups negotiated or were awarded 3% wage increases effective January 1 of the following year. (The only exception was a 3.5% increase for the Teamsters on January 1, 2007.) In July 2010, per a fact-finding award, the police received a \$1000 lump-sum payment in lieu of a wage increase, with a reopener for the last two years of the Agreement. The same bonus was passed on to non-union employees, police sergeants and Teamsters on January 1, 2011. (Firefighters received a 3% increase already provided for the last year of a multi-year contract.) The OPBA reopener went to conciliation in 2011, and the Conciliator ordered a wage freeze for the remaining two years of the Agreement, with a \$1000 lump sum payable July 1, 2012. The Conciliation Award also included a “me too” provision. The same \$1000 lump sum was paid to non-union employees and Teamsters on July 1, 2012, and to Sergeants on January 1, 2013. On January 1, 2013, non-union employees were given a 3% increase. This 3% increase was

extended to police officers and police sergeants pursuant to the “me too” clause in their Agreements. The Teamsters did not have a “me too” clause and thus did not receive the 3% raise.

However, beginning in 2012, the firefighters broke away from the City's wage pattern. On May 30, 2012, after a six-year study, the City combined its fire department with Miami Township's fire department. The combined departments formed the new Miami Valley Fire District. From that date forward, all firefighters have been employed by the District, which is a separate legal entity. The firefighters thus are no longer part of the City's workforce. The City's funding obligation to the District is fixed at a sum certain for the next five years. Personnel decisions for the Fire District are made by a separate Board; the City is represented on, but does not control, the Board.

In July 2012, the District gave its firefighters a \$1900 lump sum to cover their initial period of employment, and in 2013 it negotiated a new three-year agreement with the IAFF. This Agreement, effective June 4, 2013 – June 25, 2016, provides for wage increases of 5.5% effective June 24, 2013, 2.5% effective June 9, 2014, and 1.5% effective June 8, 2015. It also increases the employee share of monthly insurance premiums to 20%, compared to the 10% now paid by police. The wage settlement also took into consideration the fact that firefighters gave up their Earned Days Off (“EDO's”).

Non-union employees have not yet been awarded increases for 2014. Similarly, police sergeants and Teamsters-represented employees have not yet negotiated 2014 increases. The subject OPBA Patrol Officers Agreement, therefore, is the lead negotiation and may set a pattern for other 2014 City wage increases.

#### **D. Comparability Data**

Each party prepared a chart specifically comparing top pay for Miamisburg

officers to top pay for patrol officers in selected area cities. Not surprisingly, in some cases the City and Union selected different cities for comparison. The following chart combines data submitted by both parties:

City	Top Pay	% Increase *					
	2013	2009	2010	2011	2012	2013	2014
Oakwood	\$87,942						
Kettering	\$76,330						2.5
Centerville	\$74,110						
Vandalia	\$70,305	3.0	3.5	2.25	2.25	2.25	
Beavercreek	\$69,971		3.0	3.0	2.25	2.25	
Englewood	\$68,827						2.0
Huber Heights	\$65,937			0.0	0.0	0.0	
<b>Miamisburg</b>	<b>\$65,212</b>	<b>3.0</b>	<b>**</b>	<b>0.0</b>	<b>**</b>	<b>3.0</b>	
Fairborn	\$64,438	3.5	0.0	0.0	1.0	2.0	2.5
Piqua	\$64,405		0.0	0.0	3.0	0.0	
Springboro	\$64,343	2.0	3.0	3.5	3.0	3.0	3.0
Moraine	\$63,044	3.0		0.0	0.0	0.0	
Middletown	\$62,253				0.5	0.0	0.0
West Carrollton	\$61,693	3.0	0.0	**	**	0.0	
Trotwood	\$61,422	0.0				1.0	1.0
Hamilton	\$58,178	4.0	0.0	0.0	0.0	0.0	
Miami Twp.	\$55,681			0.0	0.0	2.0	

Notes to Chart: \*Both parties supplied 2014 increases where known. Only the City provided information about percentage increases for 2009-2013. \*\* In lieu of wage increases Miamisburg officers received a \$1000 lump sum payment in 2010 and 2012. Similarly, in lieu of wage increases, West Carrollton officers received lump sum payments equal to 1.5% of their pay in 2011 and 2012.

The parties seem to agree that Vandalia, Huber Heights, Morain, West Carrollton, and Trotwood are valid choices for comparison. These cities were included in both parties' charts. The Union challenges inclusion of Fairborn, Middletown, Miami Township, and Hamilton, which it says are less affluent communities. Similarly, the City argues against two of the Union's choices: Located next to Wright Patterson Air Force Base, Kettering, is a much larger city, has a significant commercial tax base, and in the past benefitted from significant estate tax revenue. Oakwood, the City notes, is a small and unique community – it is very affluent, and it

operates with a single public safety department which provides police, fire and paramedic services. At least with respect to inclusion of Miami Township, Hamilton, Kettering and Oakwood, it appears that these criticisms are valid.

The City also submitted wage increase data based on SERB's 2012 Annual Wage Settlement Report. That report showed that average increases negotiated in 2012 were 1.08% for all public employees in SERB's Dayton Region; 1.20% for all city employees statewide; and 1.14% for all police employees statewide. These averages soon will be updated by SERB's 2013 Annual Wage Report, which unfortunately has not yet been released. In any event, the averages reported by SERB reflect a mix of "haves" and "have nots." On the one hand, there are wage freeze agreements for numerous government units (including many in southwestern Ohio) which continue to experience financial problems from the recent recession, exacerbated by state funding cuts. On the other hand, many government units are participating more fully in the gradual economic recovery, and their wage increase settlements frequently provide increases of 2% or a little more.

### **ANALYSIS AND RECOMMENDATIONS**

#### **1. Article 14 - Wages**

Positions: The City proposes a one-year wage freeze. The Union proposes a 3.5% increase effective January 1, 2014.

**RECOMMENDATION: Increase wages 2.0% effective January 1, 2014.**

Rationale: Typically, wage increase recommendations are based primarily on the employer's "ability ... to finance ... and the effect of the adjustments on the normal standard of public service," OAC 4117.09-05(3); comparison to wages paid and increases awarded to comparable Ohio public employee groups, OAC 4117.09-05(2); and equitable treatment among the employer's various employee groups, OAC 4117.09-05(6).

The financial information summarized at pp. 4-6 of this Report indicates that the City can afford to pay a 2.0% increase without adversely impacting the level of services during the term of the Agreement or immediately thereafter. The City conservatively projects a break-even year for 2014, assuming no wage increases or cuts in services. The City stated that the cost of a 1% increase in bargaining unit wages, including roll-up, would be about \$23,000, or about \$46,000 for a 2% increase. If passed on to other City employees, the total cost would be a bit over \$100,000. This should not materially impact a budget based on projected revenues of almost \$18.74 million. Moreover, the 29%-30% projected year-end balance exceeds the City's own 25% target for year-end balances, and significantly exceeds the 17% target recommended by the Municipal Finance Officers' Association in their Best Practices. There is, therefore a cushion to cover emergency expenses above and beyond those now foreseen. The Fact Finder understands the City's concern about the potential long-term impact of pending legislation which would establish a loss carryforward requirement for local income taxes. However, the legislation has not yet passed the Senate, and in any case the loss carryforward provision would be phased in 2017-2022. At that time, it might be a problem. Then again, it projected losses might be offset by other positive developments, such as increased taxable income from economic growth, and/or increased interest revenue from rising rates. All of this is still speculative. It is premature to give such possibilities much weight when evaluating a modest and otherwise appropriate pay increase in a one-year contract. Certainly, during the term of this Agreement and for a couple years beyond, the City can pay for a 2.0% increase without adversely affecting City services.

Regarding comparability, the Fact Finder has reviewed the data submitted by both parties and summarized at pages 8-9 of this Report. The City's top police salary ranks a

little above the median when compared to comparable area communities. This is true when the entire list of comparable communities are considered; it is equally true if consideration is limited to the five cities that both parties agree are comparable. It appears from the chart that the lump sums and 3% third-year raise were sufficient for the City's patrol officers to maintain their relative standing during the preceding three-year contract. Based on the limited information available about 2014 settlements, it appears that 2.0% will be sufficient for the the patrol officers to maintain their ranking in 2014. Therefore, comparability supports a 2.0% wage increase recommendation.

Finally, the 2.0% recommendation is not inconsistent with the need for equitable treatment of the various groups employed by the City. Raises have not yet been determined for Teamsters, police sergeants, and non-union employees. While not completely irrelevant, the IAFF settlement with the Miami Valley Fire District is not controlling for several reasons. First, firefighters no longer are City employees, and the funding considerations are not the same as those applying to employees paid directly from the General Fund. Second, a part of the firefighters' pay increase is attributable to compensation for relinquishing their EDO's. Third, the IAFF Agreement is a three-year contract with a front-end load. The front load does not necessarily transfer to a one-year contract with no specification for compensation in 2015 and 2016. Finally, the IAFF contract requires firefighters to pay 20% of their health insurance premiums, compared to the 10% paid by the City's police officers.

## **2. Article 15 – Health Insurance**

Positions: The City proposes to increase the employee's share of health insurance premiums from 10% to 20%. It “understands that this increase may not be possible with a wage freeze,” but states it “must receive some relief” in insurance if any wage increase

is recommended. In support of this proposal, the City notes that the current 10% employee share is less than the share paid by police in most neighboring jurisdictions, where employees most commonly pay 13% -15%. Further, it notes that, under their new Agreement with the Miami Valley Fire District, firefighters will be paying 20% of insurance premiums. Finally, The City asserts that the statewide trend is toward higher employee premium contributions.

The Union objects to any increase in the employee's share of insurance premiums. It states that the alleged trend of increasing employee premium share is not reflected in statewide statistics, which show that employee premium share for cities with populations of less than 25,000 have held fairly constant. It argues that the City's reference to the Miami Valley Fire District insurance provision is inconsistent with its refusal to consider the Fire District's wage increases as a valid comparison for police wages. Finally, the Union emphasizes that the monthly dollar cost of the employee's 10% premium share for a family policy has increased from \$48.46 in 2009 to \$79.27 in 2013 – a \$60/month increase which approximates 1% of the employee's wage.

**RECOMMENDATION: Retain current premium contribution level. No change in current insurance provision.**

Rationale: Although not reflected in the statewide data for cities with fewer than 25,000 people, there does appear to be a trend toward gradually increasing public employee premium share towards 15%. However, the City has not shown an immediate need to economize by reducing its share of insurance premium payments during the term of this one-year agreement. Moreover, unlike the Fire District employees, the police are not slated to receive a significantly above average wage increase which would partially offset the first year cost of paying a higher premium share.

**3. Article 15 – Uniform Allowances**

Positions: The Union proposes increasing the uniform allowance from \$750 to \$1000. It argues that the uniform allowance has not gone up for six years, while costs have increased, though supporting evidence of cost increases was not submitted. It also notes that neighboring cities Centerville, Englewood, Huber Heights, Vandalia and West Carrollton simply provide uniforms, thus bearing the full expense, and two other neighboring cities – Oakwood and Trotwood – pay \$1,000. The City disputes the need for a uniform allowance increase, noting that the Union did not submit solid supporting evidence of the claimed cost increases or the insufficiency of the current allowance to cover actual costs.

**RECOMMENDATION: No increase in uniform allowance.**

Rationale: The evidence did not clearly establish a material increase in the individual officer's out-of-pocket uniform costs.

**4. Scheduling Addendum**

Positions: The City proposes to remove the scheduling Addendum to the Agreement. The Addendum states that the Chief has the right to set the schedules, but any change must meet certain criteria, including a 70% employee approval vote. While the City has no immediate intention of changing the current 40 hour, five-days-on, two-days-off schedule, it believes it should have the unrestricted right to do so if necessary in the future. The Union opposes the proposed deletion of the Addendum. It states that the Addendum has been in the Agreement for a few years without causing a problem for either party, and the City did not demonstrate any need to remove it now.

**RECOMMENDATION: No change, retain the Scheduling Addendum in the new Agreement.**

Rationale: While the 70% vote requirement is unusual and somewhat restrictive, it is a long-standing provision bargained by the Union. Absent a showing by the City of a current operational need to adjust schedules, it would be unreasonable to expect the Union to give this right up in a one-year contract without a quid pro quo.

These Findings and Recommendations are issued this 17<sup>th</sup> day of January, 2014.

Shaker Heights, Ohio

s/John T. Meredith  
John T. Meredith, Fact Finder

### **CERTIFICATE OF SERVICE**

This is to certify that the foregoing Report was electronically filed with the State Employment Relations Board and electronically served upon the parties by e-mailing same to their representatives, listed below, this 17<sup>th</sup> day of January, 2014.

Joseph Hegedus  
Ohio Patrolman's Benevolent Association  
92 Northwoods Blvd., Suite B-2  
Columbus, OH 43235

[jmhege@sbcglobal.net](mailto:jmhege@sbcglobal.net)

Representative of the Union

Donald L. Crain, Esq. & Alex Ewing, Esq.  
Frost, Brown, Todd, LLC  
9277 Centre Point Drive, Suite 300  
Westchester, OH 45069

[dcrain@fbtlaw.com](mailto:dcrain@fbtlaw.com)  
[aewing@fbtlaw.com](mailto:aewing@fbtlaw.com)

Representative of the Employer

s/John T. Meredith  
John T. Meredith, Fact Finder