

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING HEARING
October 28, 2015

IN THE MATTER OF:

THE CITY OF PARMA, OHIO)
)
and) SERB Case No. 2014-MED-11-1585
)
OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION (PATROL OFFICERS))

APPEARANCES

FOR THE UNION:

Randall Weltman, Attorney for the OPBA
Mary Schultz, Union Consultant
Greg Kosesl, Patrolman
Thomas O'Grady, Patrolman
Norm Kefeic, Patrolman
James Manzo, Patrolman
Bobby Jackson, Patrolman

FOR THE CITY:

Jon M. Dileno, Attorney for the City of Parma
Dennis Kish, Auditor
Tom Weinrich, H. R. Director
Mike O'Malley, Safety Director

BEFORE: Richard D. Sambuco, Fact Finder

Date of Hearing: October 28, 2015
Date of Decision: November 23, 2015

BACKGROUND OF THE CASE

On October 28, 2015, a Fact Finding hearing was held between the City of Parma, Ohio hereinafter referred to as the “City” and the Ohio Patrolman’s Benevolent Association (OPBA), hereinafter referred to as the “Union” or the “OPBA”.

The Hearing began promptly at 10:00 am and ran continuously until 6:15 pm in the City Building in Parma, Ohio.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- 1) Past collectively bargained agreements, if any.
- 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

BACKGROUND

Parma, Ohio is a city in Cuyahoga County, Ohio, located on the southern edge of Cleveland. It is both an inner-ring and the largest suburb of Cleveland. Parma, as of the 2010 census, is listed as the seventh largest city in the State of Ohio and the second largest city in Cuyahoga County after Cleveland.

As of the 2010 United States Census, there were 81,601 people, 34,489 households, and 21,646 families residing in the city. The population density was 4,076 inhabitants per square mile. There were 36,608 housing units at an average density of 1,828.6 per square mile. The racial makeup of the City was 93% White, 2.3% African American, .2% Native American, 1.9% Asian, 1% from other races and 1.6% from two or more races. Hispanic or Latino of any race were 3.6% of the population. According to the 2010 census, 22.5% were of German ancestry, 17.6% Polish, 14.8% Italian, 13.8% Irish, 7.4% Slovak, 6.7%

English, 5.3% Ukrainian, 2.6% French, 2.2% Serbian, 1.9% Czech, 1.4% Arab and 1.2% of Croatian, Lithuanian or Russian ancestries. In regard to languages spoken, 87.03% spoke English, 2.26% Ukrainian, 1.68% Polish, 1.27% Spanish, 1.24% German, and 1.18% Italian as their first language.

There were 34,489 households of which 27.1% had children under the age of 18 living with them, 45.7% were married couples living together, 12.4% had a female householder with no husband present, 4.6% had a male householder with no wife present, and 37.2% were non-families. 31.8% of all households were made up of individuals and 12.9% had someone living alone who was 65 years of age or older. The average household size was 2.34 and the average family size was 2.95.

The median age in the city was 41.5 years. 20.4% of residents were under the age of 18; 8.5% were between the ages of 18 and 24; 25.7% were from 25 to 44; 27.7% were from 45 to 64; and 17.7% were 65 years of age or older. The gender makeup of the City was 48.1% male and 51.9% female.

The median income for a household in the City is \$50,198, the median income for a family is \$60,696 and the mean income for a family is \$68,828. The per capita income for the City is \$25,064. The poverty rate in the City is 10.2%. This is low in comparison to other large Ohio cities as well as the State's individual poverty rate of 15.4%

Parma ranks as the third safest city in the United States with a population of 25,000 or more. Parma has a crime index of 90 out of 100, making it safer than 90% of the cities in the United States with a violent crime rate of 0.69 per 1,000 residents and a non-violent crime rate of 5.57 per 1,000 residents.

During the population boom between 1950 and 1980, Parma's commercial sector grew to match its residential sector. Since the 1950's, Parma has fostered the growth of many small businesses and been an operating hub for such well-known companies as General Motors, the Union Carbide Research Center (now GrafTech International) and Cox Cable Television.

Located close to City Hall, at Ridge Road and West Ridgewood Drive, are The Shoppes at Parma (formerly Parmatown Mall).

UNION'S POSITION

Past Negotiations

The parties have maintained a collective bargaining relationship for many years and have negotiated several labor agreements. Almost all of their negotiations have been resolved with the necessity of using fact-finding and/or conciliation.

For example, their contract negotiations for 2003-2005 ended up in fact-finding and then proceeded through a conciliation hearing and award. That was followed in 2005 when the parties were able to settle their negotiations for a 2005-2008 contract, but only after the issuance of a fact-finding report that concerned the City's other safety force; its firefighters.

The parties' 2009-2011 negotiations were not completed until; again, a fact-finder issued a report and recommendation concerning the Firefighters. And finally, during the parties' last round of negotiations, for their 2012-2014 contract, it was settled following the issuance of a fact-finding decision.

Each of the fact-finding recommendations and/or conciliation awards, as referenced above, will constitute an exhibit for the instant fact-finding matter. The position taken by the City in each proceeding is consistent and predictable – it does not have the money to afford the union's wages and compensation proposals.

Each and every neutral over the years had thoroughly reviewed Parma's financial records and the testimony of the City's various officials. Not once did a neutral accept or otherwise sanction the City's characterization of its finances. In fact, in every instance, the neutrals have rejected the City's position in favor of the Union's.

Current Negotiations During the course of 2015, the parties met several times, without their respective counsel, in an effort to negotiate a 2014-2016 labor contract. As is typical, the City proposed no wage increases and freezes and/or concessions on several pay components.

In true fashion, Parma is claiming that it cannot afford to grant any pay increases even though it continues to maintain a totally staffed police force. During this round of negotiations, the City attributes its inability to pay on the loss of a small corporate headquarters and the threat of diminishing revenue.

In response to the City's claim, the OPBA engaged a specialist (Sargent & Associates, Mary Schultz, CPA, and CFE) to audit the City's financial records, just like it has done in the past. And as in the past, the OPBA's auditor has determined that the City continues to use the same financial planning/methods as it has in the past and is essentially no better or worse off than in the past.

CITY'S POSITION

The City of Parma ("the City") and the Ohio Patrolmen's Benevolent Association ("the OPBA"), representing the City of Parma's 85 patrol officers, are parties to a collective bargaining agreement (the CBA") which expired on December 31, 2014. The parties held their first and only bargaining session on October 14, 2015 wherein the City presented a concessionary opening proposal due to its perilous fiscal condition. The Union presented no opening proposal of its own, but adamantly rejected the concept of wage freezes coupled with benefit-type concessions. As a result, the parties proceeded to fact-finding.

Since 2008, the City of Parma ("the City") has taken a series of massive blows to its fiscal health. The City has traditionally maintained an end of year General Fund carry-over balance ("General Fund Carryover") at the lower end of the scale of acceptable levels. However, for the better part of the last decade, economic forces outside the City's control have combined to drastically reduce the City's General Fund Carryover, disrupt public service and threaten its fiscal health.

Along with other Ohio municipalities, the City survived the national economic downturn of 2008-2011 by significantly reducing expenditures in response to reduced income tax (the City's single largest revenue source) and property tax revenues. The crisis required the City to negotiate concessionary agreements without wage increases with each of its 10 bargaining units in 2009, 2010 and 2011. At the same time, the City reduced staffing by 6%, restricted employee overtime and took other

steps to survive. Of those concessions agreed to or imposed, the City's civilian employees were hit the hardest – inflicted with direct wage cuts through the imposition of unpaid furloughs.

Compounding the City's financial challenges, beginning in 2011, the City saw a massive reduction in Local Government Fund ("LGF"), Tangible Personal Property Tax ("PPT"), and Commercial Activity Tax ("CAT") funding from the State of Ohio. These reductions further undermined the City's fiscal stability. Moreover, and distinct from many Ohio municipalities, the City has seen a steady decrease in population and a steady increase in its poverty rate and the associated stressors on government resources.

By 2014, decreasing revenues and increasing expenditures (due in part to employee wage and related pension contribution increases) reduced the City's General Fund Carryover to a mere 4.5% of its expenditure budget.

As a result, the City was forced to take extraordinary measures to balance the 2015 budget. By use of "one-time" revenues including the sale of public property (e.g., City-held cellular phone tower leases, a library, and Fire Department equipment) and raiding a special "27th Pay" fund, the City identified over \$2.7 million in one-time revenues and passed a balanced budget. Additional 2015 cost-cutting measures included closing City pools, and other reductions in City expenditures and services. The City also continued to leave multiple positions vacant and deferred hiring in both the Police and Fire Departments while reducing daily Fire Department staffing to reduce overtime. Without these extreme measures, the City would have found itself in "fiscal emergency" status.

While these drastic measures produced a balanced 2015 budget, the City projected virtually no General Fund Carryover by year end. As a result, the City continued to seek savings throughout 2015, but its reliance on "one-time" money put the City's financial survival in 2016 in peril. Accordingly, in September 2015, the City implemented a monthly trash fee on its already heavily taxed citizens, designed to provide the City with a chance to survive the 2016 fiscal year.

As of the date of this fact-finding hearing, the City has nothing left to sell and no other untapped revenue sources. While the extraordinary measures of the past two years will enable it to end 2015 with a barely sufficient General Fund Carryover, the City must seek agreements with its unions which secure at least some level of cost savings.

The City is a large inner-ring suburb located to the southwest of Cleveland. Its population is approximately 80,000, a reduction of almost 9% since 1990. Along with a steady decline in population, the City has experienced a steady increase in the number of its citizens who are below the poverty rate. According to US Census Bureau data, in 1990, 4.1% of City residents lived in poverty. The percentage of impoverished citizens increased to 4.9% by 2000 and more than doubled to 10.9% by 2010.

The City's primary revenue source is the municipal income tax which is levied at a rate of 2.5%. The City also receives some revenue from various property taxes which total 2.66% of residential property market value. Among the surrounding 10 cities, at 5.16% the City has the second-highest combined income and property tax rate (only Parma Heights is higher at 5.72%). In addition to income and property taxes, as of October 1, 2015, the City charges its residents a \$12.00 per month trash fee ("Trash Fee") for rubbish removal and recycling expense. Among its neighboring cities, only Cleveland (\$8.75/month) and Parma Heights (\$11.20/month) charge a Trash Fee.

To provide services to its predominantly middle class, blue collar residents, the City employs approximately 500 full-time employees (down from 531 full-time employees in 2011), most of whom are represented by a union in one of the City's ten bargaining units.

All ten City employee bargaining unit contracts expired as of January 1, 2015. The City received notices to negotiate from all of its employee unions, but has been engaged in active negotiations with only five units (AFSCME, Fire, Police Patrolmen, and Dispatchers). In mid-June, the City and the Police Captains and Police Sergeants/Lieutenants (also represented by the OPBA) entered into one-year contract extensions by which several operational issues specific to those units were addressed, as well

as those units' agreement to accept a wage freeze in 2015 and to retroactively give up 50% of their respective uniform allowance payments for 2015 (in the amount of \$700 per employee).

The State reduced its Local Government Fund ("LGF") contributions initially by 25% but growing to 50% by 2013. The State also eliminated the Tangible Personal Property Tax and virtually eliminated the Commercial Activity Tax reimbursements. Additionally, the Estate Tax was repealed effective January 1, 2013.

The City realized over \$6 million in revenues from these State sources in 2008 and over \$5 million in 2009, 2010 and 2011. With the States' reductions, the City's State support decreased by \$2.1 million in 2012, a further \$911,000 in 2013, and a further \$489,000 in 2014. The City's 2015 estimate for revenues from all these State sources is \$1.8 million – a reduction of over \$4.1 million from its 2008 revenues.

At the end of 2009, the City's General Fund Carryover was \$2.0 million (just 4.8% of the City's General Fund expenditures), down from an average of \$2.5 million for the prior five years (averaging almost 6% of General Fund expenditures). Due to the extraordinary measures the City took to reduce costs starting in 2009, the City's General Fund Carryover increased to \$2.9 million at the end of 2010. Despite the reductions in State funding that hit in 2011, as a result of continued cost cutting measures, the General Fund Carryover increased to \$4.6 million by the end of that year (10% of the City's General Fund expenditures).

Unfortunately, this swing toward fiscal stability was short lived. First, based on the pattern established by prior fact-finder reports from 2012 through 2014, all City employees received a combined 5% wage increase. Additionally, in 2014, the City's self-insured health care claims were \$750,000 over budget, requiring a significant transfer from the General Fund. Also, in 2014, the City learned that the Parma-based Graftech was moving its corporate headquarters out of the City which contributed to an overall projected \$500,000 reduction in City income tax revenues for 2015. Since 2011, the City has

reduced full-time staffing by 6% and, more recently, deferred filling 10 safety forces positions. In 2014, the City reduced the daily staffing minimum in the Fire Department to save on overtime and similar overtime-cutting measures were implemented in the Police Department. The City also sold a library building and a ladder truck in 2014 to buttress its sagging General Fund. Despite these measures, the City's General Fund Carryover dropped to \$4.0 million in 2012, \$3.2 million in 2013 and, at the end of 2014 was a mere \$2.1 million (4.5% of its General Fund expenditures).

In 2014 and early 2015, as the 2015 budget process got underway, the City recognized that it had to once again resort to drastic measures to balance its budget. Accordingly, the City slashed spending by almost \$2 million including cuts to Fire and Police overtime, pool closures, and significant reductions in spending in utilities and Senior Center. On the revenue side, the City initiated the process to sell leases it holds to cellular telephone towers¹ and sold additional City-owned property. The City also applied \$775,000 from its "27th Pay" fund to balance the budget.²

As 2015 progressed, the City continued to keep a very tight rein on expenditures. Through this careful stewardship, the City has been able to decrease its expenditures to below its budgeted numbers for 2015. Additionally, based on data through September, the City's income tax revenues are higher than originally projected. These bright spots, however, still only projected to a 4.0% General Fund Carryover for 2015. Additionally, three significant problems loom as the City looks toward 2016.

First, after spending \$750,000 more than budgeted for health care claims in 2014, it became clear that 2015 claims would also exceed the budgeted amount (which had been significantly increased after 2014). As of the date of this hearing, the City's health care claims exceeded the budget by over \$350,000 for 2015. Additionally, the City's third-party administrator estimates that 2016 claims costs will be nearly \$1.2 million higher than in 2015.

¹ As of the date of the Hearing, the sale is not complete.

² The 27th Pay Fund was created by ordinance to fund those years when there are 27 versus 26 payrolls to avoid having to absorb that significant increase in a single year. The next 27th pay year is 2019 and the City does not currently have the resources to cover it.

Second, to balance the 2015 budget, the City relied on over \$2.7 million in one-time revenues (cellular tower lease sale, other property sales and raiding the 27th Pay Fund). Despite these extreme measures, the City was still faced with either cutting expenditures by 6% in 2016 (which would certainly require layoffs and other service reductions) or finding additional revenues to plug a remaining budgeting gap. After much consideration, in September 2015, the City enacted a Trash Fee. The Trash Fee requires City households to pay \$12.00 per month for trash removal and recycling services and is projected to generate \$4.3 million annually. The Trash Fee took effect on October 1, 2015 and is expected to generate its first revenues in the first quarter of 2016.

Finally, prior to February of 2016, City residents receive recycling services through an agreement between the City and the provider. Pursuant to that agreement, the provider retained rights to use certain City property in exchange for providing recycling services at no cost to City residents. The agreement expires in February 2016 and the City will be required to pay approximately \$680,000 annually for recycling services thereafter.

The City has very carefully managed spending and revenues, has significantly increased the financial burden on its citizens and, as a result, as of the date of this fact-finding, projects a General Fund Carryover of approximately \$2 million in 2015 – roughly 4.3% of 2015 General Fund expenditures and about \$100,000 below its 2014 balance. If that is achieved in 2015, it will have been done without imposing any concessions (other than the uniform allowance forfeiture of the Police Department's sergeants, lieutenants and captains), layoffs or furloughs on City employees.

In 2016, the City will have the benefit of the Trash Fee revenues and, at this time, income tax revenues are projected to increase slightly. However, the City will also have to absorb almost \$2 million in additional health care claims and recycling costs. Additionally, based on the triennial adjustment of City property values, the City anticipates a 3% decrease in property tax revenue of approximately \$100,000.

As of the date of this fact-finding, the City projects a General Fund Carryover of only \$2.1 million for 2016 on estimated General Fund expenditures of \$48.4 million. And, as this Fact-Finder can see, the City would have been facing bankruptcy absent the \$4.3 million generated by the Trash Fee, and the \$2.7 million in one-time revenues generated this year.

Here, the City's goal is to obtain relief that will allow it some small measure of budgeting cushion. Notably, the City's proposals in this fact-finding depart significantly from its initial proposals seeking drastic across-the-board wage reductions and other concessions. And, now, the City's proposals are supported by the fact-finder's report issued in the AFSCME negotiations. Having done the hard work to buttress its future fiscal outlook by controlling expenditures and increasing revenues – without imposing layoffs or furloughs – the City's proposals are modest under the circumstances. If the City reaches its goal in this fact-finding, it will enter 2016 with a bare necessity of fiscal stability.

The foregoing is the Union's and the City's positions with regard to the eight (8) issues at bar as follows:

- 1) Article 26 – Wages
- 2) Article 17 – Sick Leave Cash-Out, (The City withdrew this proposal during the fact-finding hearing).
- 3) Article 21 – Overtime
- 4) Article 22 – Longevity
- 5) Article 23 – Uniform Allowance
- 6) Article 29 – Injury Leave
- 7) Article 31 – DURATION

Article 26 – Wages

The City is proposing the following:

Wages

Year 1 – 0%

Year 2 – 0%

Year 3 – Wage reopener as follows: Either party may request to re-open the Agreement in 2016 for purposes of negotiating a general wage increase or decrease for 2017. Such request must be made between October 1 and October 31, 2016.

The Union is proposing the following:

Wages

Year 1 – 2% (2015 – retroactively)

Year 2 – 3% (2016)

Year 3 – 4% (2107)

According to the Union, the OPBA’s proposal is justified based on external comparability, whether viewed locally, regionally or statewide. Given the imposition of additional employee pension contribution costs and employee health care increases during the past few years, such wage increases may only take an employee to break-even, much less the wage growth they seek and deserve.

With regard to its proposal, the City contends that the City’s financial crisis requires a recommendation of its proposals and a rejection of the Union’s proposals. The Union’s proposals, even if applied solely to the OPBA units would take a substantial bite out of the City’s modest cash balance. However, if the Union’s proposal was applied City-wide, at a cost of \$400,000 for each percent, it would reduce the City’s 2016 General Fund balance by \$2.0 million and break the City.

Here, the City’s proposal is not only required by its precarious financial condition, but it has also now been sanctioned by a fact-finder. In all, the City’s inability to pay as demonstrated by its ongoing cycle of fiscal crises and repeatedly having to resort to drastic measures to balance its budget, and another neutral’s recommendation of the City’s very proposal on wages should compel a recommendation in favor of the City’s proposal.

DISCUSSION:

The inability to pay has come to mean that a public employer cannot meet the Union’s demands because of a lack of funds. The inability to pay is a bar to granting any wage and/or benefit increases. This is the strict interpretation of the meaning of the phrase “inability to pay”. That notwithstanding, a public employer may be in a situation where it has managed its resources in such a way that it has

enough money to pay some wage and benefit improvements, but not in the amount that the Union demands.

A City cannot claim that it is facing a financial exigency as a way to avoid reasonable demands proposed by the Union. If a City is claiming that it has a financial problem, it must take steps intended to at least mitigate the problem. There is a list of items that fact-finders have used to show that a City is facing a financial emergency including but not limited to layoffs, cuts in basic services postponing capital expenditures, across-the-board wage and salary cuts and etc. Absent some actions intended to forestall a pending crisis a declaration of inability to pay is not convincing. For example, layoffs are a visible sign of financial distress. The City states that it has continued to leave multiple positions vacant (where? In the Police Department?) and deferred hiring in both Police and Fire Departments while reducing daily fire department staffing to reduce overtime. It is my understanding that the Police Department is fully staffed.

An examination of the previous agreement (Joint Exhibit No.1 in years 2012, 2013 and 2014) we find the following in ARTICLE 26.01:

Year 1 – “There shall be no wage increase in 2012”

Year 2 – “Effective January 1, 2013, there shall be a one and three-quarter percent (1.75%) wage increase”.

Year 3 – “Effective January 1, 2014, there shall be a two and one-quarter percent (2.25%) wage increase.

This amounts to a four percent (4.0%) increase over a three-year contract. This is what the parties agreed to and signed; all in the face of our economic circumstances expressed chronologically by the City beginning with 2008 through 2012.

In reviewing pertinent fact-finding reports applicable to the City of Parma, I find the following:

SERB Case No. 05-MED-01-0047: “**A three (3%) percent increase in each year** of the prospective contract retroactive to January 1, 2005 with a fifth (5) year added to the current scale in the amount **proposed by the City.**” (Emphasis Added)

SERB Case No. 02-MED-03-0171: A conciliation award reads as follows: The salary schedule shall be amended to include a two percent (2%) raise for 2002, a four percent (4%) raise for 2003 and a four percent (4%) raise for 2004.” This amounts to a ten (10%) raise over three years

With regard to the City’s comment about the Union’s proposal being applied City-wide at a cost of \$400,000 for each percent; this is purely a hypothetical exercise and not relevant in this instant matter.

The City argues that its precarious financial condition has been sanctioned by a previous fact-finder.

As part of his rationale for his decision, that fact-finder utilized the stock market as an indicator, debt in Greece, widespread instability and turmoil in the Middle East, the Syrian refugee crisis in Europe and the slowing economy in China.

The above rationale does not meet the criteria as set forth in Rule 4117.14 (G)(7) OF THE Ohio Public Employee Bargaining Statute.

Furthermore, that particular fact-finding report (SERB Case #14-MED-06-0874 and 0875) covers the Parma City Hall Employees Unit and Police Records Unit who are represented by AFSCME Ohio Council 8, Local 0875. Those employees are not Safety Forces (Fire and Police) and do not enjoy the benefit of conciliation. Their only recourse is the right to strike or accept the fact-finder’s report.

Mary Schultz, CPA, CFE, a financial consultant retained by the Union to examine the City’s finances, states the following in the summary of her report:

“The 12-31-14 General Fund carryover balance was \$2,141,000, a **5% reserve**. The 12-31-14 balance in the Police Levy Fund was \$84,000 and the balance in the Law Enforcement Trust Fund was \$665,000. (Emphasis Added)

The City has several options that would provide funds for Police Officer wages and benefits. City Council could consider a one-time or permanent redistribution of the Income Tax revenue by ordinance, since the Capital Fund currently has a \$2,531,000 balance. Also, the \$665,000 balance in the Law Enforcement Trust Fund can offset the cost of supplies and other expenses of the Policy Levy Fund and/or General Fund to free up money for police officer wage increases.

We noted that included in the 2014 General Fund expenditures was \$2,575,000 spent for recreation (pool and ice rink) and senior citizen programs. These expenses have increased each year since 2009. Other cities have made budget reductions for non-essential programs, to assure that public safety is a financial priority.

The City's estimated revenues and budgeted expenditures already include a .98% wage cost increase for the Police Officers for 2015, which is clearly affordable. (Emphasis Added).

Respectfully submitted,

/s/Mary Schultz, CPA, CFE"

Ms. Schultz testified under oath that while her conclusions may differ from City Auditor, Mr. Dennis Kish, she and Mr. Kish are in agreement with regard to the City's financial figures included in her report.

The City also argued that its carryover budget balance is dangerously low. The Fact-Finder agrees that a 5% carryover is low. This fact, in and of itself, would not prove an inability to pay however. Moreover, the record shows that Parma consistently has a carryover in the 5% range, i.e., the City usually spends whatever it generates. If revenues rise, the City spends more. If revenues fall, the City spends less. Therefore, the City's budget carryover is reasonable for Parma.

Referring to Tab Ten (10) of the City 's Position Statement, we find that the January 1, 2015 General Fund Carryover was \$1,965,540. For the year 2016, we find that the General Fund Revenue estimate (as of October 1, 2015) is \$46,145,077. There seems to be an error here. According to my addition that figure should be \$46, 353, 077. The October 1, 2015 General Fund Expenditures Estimate is \$46,037,951 leaving a balance of \$107,126. Again, according to my subtraction that figure should be

\$315,126. This figure \$315,126 when added to the \$1,965,540 results in \$2,280,666. The October 1, 2015 Estimated Year End General Fund Balance of \$2,072,666, according to testimony at the Hearing represents 4.3% of the total budget. Utilizing my figures (i.e. $2,280,666/46,353,077 = 0.049$ or 4.9%).

The Fact-Finder recognizes that GrafTech has announced that it will be leaving the City of Parma along with some 240 jobs. However, before they physically leave and totally eliminate their payroll, there should be some income revenue from these jobs in the foreseeable future in 2016.

Alternatively, Pitt Ohio is scheduled to bring more than 200 jobs and a seven million dollar (\$7,000,000) payroll to Parma. The project is scheduled to be completed in about 18 months. This time frame (given the proposed wage freeze for year 2015) should serve to offset the departure of GraffTech in the coming year of 2016.

The City states it has closed all swimming pools as a cost-saving device. It does not include the ice skating rink as another cost savings. This fact-finder has to wonder whether the change of seasons has anything to do with the decision to close the pools and keeping the ice skating rink open.

Recommendation: This Fact-Finder recommends the following contract language:

Effective January 1, 2015, the wage schedule shall be frozen.

Effective January 1, 2016, the wage schedule shall be increased by 1.75%

Effective January 1, 2017, the wage schedule shall be increased by 2.25%

Sick Leave Cash-Out - Article 17; Longevity; Article 22; and Uniform Allowance - Article

23

City Proposal

In three separate proposals, the City proposes to suspend the above-referenced benefits for 2016 only.

Union Proposal

Maintain current contract language.

The City's proposal is motivated by pure economic necessity. Without the temporary relief sought in these proposals, the City runs the risk of going broke by year-end 2016. Two of the three items proposed (Sick Leave Cash-Out and Uniform Allowance) have already been recommended by a fact-finder and accepted by the City's two AFSCME bargaining units. The justification for the City's proposed suspension of longevity payments is that the City's civilian groups have given more in concessions over the years than the City's safety-force employees. Moreover, the ranking officers in the City's Police Department gave up \$700 in uniform allowance in 2015, while the patrol officers sacrificed nothing. For all of these compelling reasons, the City's proposals should be recommended.

DISCUSSION:

At the Fact-Finding hearing, the City withdrew its proposal for Article 17 - Sick-Leave Bonus, although the City referred to it as its comp-time proposal.

With regard to the clothing allowance, the uniforms of the ranking officers are not exposed to the day-to-day irregularities (I.e., blood, other foreign substances, weather, etc.) while performing their regular duties.

With regard to Uniform Allowance, Article 23.01, I recommend suspending the additional maintenance allowance for year 2016 for probationary employees only.

Issue 4, Article 22 – Longevity **The City proposes** suspending longevity payments for 2016. I could not find the Union's response to the City's proposal; however, I feel that I can safely conclude that the Union's response would be "maintain the current language."

DISCUSSION:

I notice in its proposal, the City did not make references to the ranking officers as it did in the Uniform Allowance concession of \$700.00.

If the City's proposal "suspending all longevity payments for 2016" applies also to the ranking officers, then in the interest of the City's financial situation, I would recommend the City's proposal for year 2016 only. If that is not the case, I recommend no change in the current language of Article 22 - Longevity.

Article 29 - Injury Leave

The City's proposal is to delete Section 29.02, non-hazardous injury leave, from Article 29. Section 29.01 and Section 29.02 for purposes of comparison, are shown below as follows:

"Article 29 - INJURY LEAVE

29.01 An employee who is disabled as a result of the performance of hazardous duties, as defined below, either on or off regular hours of duty, if such disability prevents him from performing his duties, shall be paid his regular compensation during the continuance of such service-related disability, but for a period not to exceed 180 calendar days from the date such service-related disability was incurred. During such injury leave, compensation shall be paid in accordance with this section whether or not the regular employee has accumulated sick leave. Hazardous duties include, but are not limited to, apprehension of or attempted apprehension of suspects, active participation in prevention of crimes, and the pursuit of suspects. In those cases where the Employer appeals a claim, and where an employee's injury prohibits him from working "light-duty" or "TWL", and the only medically approved treatment is surgery or an MRI is required to determine the type of treatment and injury, the one hundred eighty (180) day time limit be extended from the date of the Employer's appeal to the date of initial determination by Workers' Compensation, providing the approval was not delayed by the employee or employee's physician.

29.02 An employee who is disabled as a result of the performance of non-hazardous duties within the scope of his employment, if such disability prevents him from performing his duties, shall be paid his regular compensation during the continuance of such service-related disability, but for a period of 180 calendar days from the date such service-related disability was incurred. During such injury leave, compensation shall be paid in accordance with this section whether or not the regular employee has accumulated sick leave. In the event accumulated sick leave is available, however, and a service-related disability within the meaning of this paragraph is incurred, the first twenty (20) days of said service-related disability shall be charged to said employee's accumulated sick leave credit, or if less than twenty (20) days accumulated sick leave is available, the existing sick leave credit shall be charged and any remaining service-related disability shall be charged to injury leave. In no event will an employee receive more than his regular compensation while on injury leave."

The Union's position is to maintain the language as written.

CITY'S POSITION

The City seeks to modify this language to reflect its original intent - that full pay and benefits are allotted for injuries flowing from the hazardous nature of police work. Here, however, the language has morphed into full pay and benefits for any and all injuries occurring on the job. Hence, an officer hurts his back picking up a police report off the floor - full pay and benefits; an officer twists his ankle walking to his cruiser - full pay and benefits.

The City simply proposes that this generous benefit be provided for injuries flowing from the performance of hazardous duties - assaults, high-speed chases, gun fire, etc. The more routine injuries would be covered under Ohio's Workers' Compensation laws.

My first response is how such complicated language got in there in the first place. This is an arbitrator's nightmare. Second, removing Section 29.02 will result by virtue of their job

description; make all police duties as hazardous duties. Third, who is to decide what police duty is hazardous? Fourth, if two policemen are pursuing a suspect in a car, one is driving and the other is a passenger in the same car, which one is actively participating in the prevention of a crime?

This language is so convoluted that it best be left alone as the parties have expressed. Only the parties know the reasons behind the inclusion of this language. Certainly, a fact-finder who has seen this language for the first and only time would be cautious about changing what the parties have intended.

RECOMMENDATION: Maintain the current language.

A. The OPBA's Proposals

1. Article 19 - Holidays

The OPBA proposes language that would permit employees in their last six (6) years of employment, to cash in their contractually paid holidays for pay in the employee's regular paycheck. This is designed to modestly bolster the salaries of employees looking toward their retirement. By doing so, they may be able to enhance their pensions. Such a benefit is already enjoyed by the City's police supervisors.

The OPBA's proposal is:

Section 19.02 - Add to end of current section: "During an employee's last six (6) years of service with the City prior to entering the "Drop" program or retirement, the employee may

elect to convert holiday time to cash as the holiday occurs, to be paid in the employee's regular paycheck.

DISCUSSION

The record will show that all parties are in agreement that this benefit has been enjoyed by the City's police supervisors and even the patrol officers. It was mentioned at the Hearing that this has been a long-standing practice.

The essence of a practice is a "mutuality of intent" and since both management and non-management are both aware of this practice, then I concur with the practice.

RECOMMENDATION

Include the Union's quoted language as presented at the end of Article 19, Section 19.02 in the adopted Collective Bargaining Agreement.

Overtime: Article 21, Sections 21.03, 21.04 and 21.08

Section 21.03 reads as follows:

"21.03 Employees who work overtime shall be compensated at a rate of one and one-half times (1-½) their normal hourly rate of pay, which shall include the employees' longevity compensation. Employees may, at the time overtime is worked, elect to be compensated for the overtime in either cash payment paid with the normal payroll or receive compensatory time off. If no election is made, the overtime shall be paid with the next available payroll. Any employee working for another employee, who was granted time off and works to maintain minimum manpower requirements, will receive straight time pay; and the hours so worked will not count as "hours worked" for purposes of computing overtime pay."

City's proposal:

Allow the City to be the determiner of whether compensatory-time or cash is allocated for overtime worked.

City's suggested revision:

A. Section 21.03 - Amend Section 21.03 to read as follows:

Employees who work overtime shall be compensated at a rate of one and one-half times (1-½) their normal hourly rate of pay which shall include the employee's longevity compensation. ~~Employees~~ **The City** may, at the time the overtime is worked, **designate whether it will elect to be compensated for overtime** in either cash payment paid with the normal payroll or ~~receive~~ compensatory time off. ~~If no election is made, the overtime shall be paid with the next available payroll.~~ Any employee working for another employee, who was granted time off and works to maintain minimum manpower requirements, will receive straight time pay; and the hours so worked will not count as "hours worked" for purposes of computing overtime pay.

B. Section 21.04 - Amend Section 21.04 to read as follows:

Employees may accumulate up to four hundred-eighty (480) hours of compensatory time. ~~Compensatory time not used within three (3) years shall be converted to cash at the employer's current rate of pay.~~

Union Proposal with Regard to Section 21.03

Maintain current contract language.

The City proposes that it secure discretion as to whether overtime is paid in cash or compensatory time. The City presents this proposal because the granting of a time-off benefit as opposed to cash can cost the City more money due to having to replace absent officers, thereby creating overtime. This proposal would not result in any loss of compensation but would merely provide the City with the authority to determine the form in which compensation is paid.

DISCUSSION

The Union states that the City's proposal would not result in any loss of compensation but would merely provide the City with the authority to determine the form in which compensation is paid.

Therefore, in keeping with the contract's Management Rights Clause, Article 5, Section 5.03, which is one of the strongest I have seen, reads in pertinent part as follows:

5) make any and all reasonable rules and regulations,"

RECOMMENDATION

I recommend the adoption of the City's proposal of amending Section 21.03 to read as follows and to be included in the newly approved contract.

Article 21

Section 21.03 - Employees who work overtime shall be compensated at a rate of one and one-half times (1-½) their normal hourly rate of pay which shall include the employee's longevity compensation. The City may, at the time the overtime is worked, designate whether the employee will be compensated in either cash payment paid with the normal payroll or compensatory time off. Any employee

working for another employee, who was granted time off and works to maintain minimum manpower requirements, will receive straight time pay; and the hours so worked will not count as “hours worked” for purposes of computing overtime pay.

Section 21.04 - Employees may accumulate up to four hundred eighty (480) hours of compensatory time. Compensatory time not used within three (3) years shall be converted to cash at the employee’s current rate of pay.

I recommend no changes in the language of Section 21.04.

Article 21, Section 21.08 in the current Collective Bargaining Agreement reads as follows:

“21.08 Employees will be scheduled for 2080 hours per calendar year (2088 in leap year). At the conclusion of each calendar year, each employee’s payroll records will be reviewed. Consistent with current practice, employees who have worked regularly scheduled hours in excess of 2080 hours (2088 in leap year) will be paid at the overtime rate for all such excesses of regularly-scheduled hours worked, and employees who have worked less than 2080 hours (2088 in leap year) per their regular schedule, will be required to use a time-off benefit (other than sick leave) to make up the difference to 2080 hours (2088 in leap year). Such review and final payment adjustment will be completed no later than March 1st.

The City’s position is to maintain the current language above.

The Union’s position is as follows:

Article 21 - Overtime

The parties constructed current Section 21.08 during their last round of bargaining. They added the language in order to incorporate a long-standing past practice.

The parties' past practice never took into account Leap Year and thus treated that sort of year like any other. Nonetheless, the City, in agreeing to contractualize the practice, insisted on a Leap Year modification, which is not justified.

The OPBA's proposal is:

Section 21.08 - Employees will be scheduled for 2080 hours per calendar year. At the conclusion of each calendar year, each employee's payroll records will be reviewed. Consistent with current practice, employees who have worked regularly scheduled hours in excess of 2080 hours will be paid at the overtime rate for all such excess of regularly-scheduled hours worked, and employees who have worked less than 2080 hours per their regular schedule, will be required to use a time-off benefit (other than sick leave) to make up the difference to 2080 hours. Such review and final payment adjustment will be completed no later than March 1st.

DISCUSSION

The only difference between the current language above and the OPBA's proposal appears to be the annual hours; 2080 vis-à-vis 2088. The Union contends that the City strong-armed the Union into accepting the current language during the last negotiations. However, the Union agreed to the contract language during the last negotiation, so I recommend retaining the current language as expressed in the current collective bargaining agreement.

Article 26 - Section 26.03 of the current Collective Bargaining Agreement reads as follows:

"26.03 When it is deemed necessary by the Director of Public Safety to appoint additional patrolmen to the Detective Bureau, SWAT and public relations duties,

such patrolmen shall receive, in addition to their regular compensation, the sum of forty dollars (\$40.00) per month, while actually performing such duties. Employees assigned to motorcycle patrol shall receive a monthly stipend in the amount of twenty-five dollars (\$25.00), thirty-five dollars (\$35.00), or forty-five dollars (\$45.00), depending upon level of accident investigation training as set forth in Department Policy. Employees who are required to carry a pager while on off-duty status shall receive additional compensation as follows: Twenty dollars (\$20.00) per week.”

The City’s position is to maintain the same language as written above.

The OPBA proposes to add the special capacities of K-9 unit and Evidence Technician to the list of special capacities that are currently paid a stipend of forty dollars (\$40.00) per month for their special service. Both K-9 and Evidence Technician officers undergo considerable training and provide the same sort of important services as the stipends’ other recipients.

The OPBA further proposes to add a modest stipend of pay for each bargaining member acknowledging and rewarding the dangers and risks associated with being “First Responders”. Such a stipend would be unique to the bargaining unit as is their status of first responder to any and all dangerous and/or unknown calls for service.

The OPBA’s proposal is:

Add Section 26.10 - Effective January 1, 2015 bargaining unit members who are regularly subject to respond to public emergency calls, whether said calls are as a member of the uniformed force or as a detective, shall be entitled to an emergency response allowance in addition to his/her regular compensation. This compensation shall be fifty dollars (\$50.00) per month.

DISCUSSION

As I understand, the Union's proposal with regard to Section 26.03, the Union wants to insert into the language after the word SWAT, "K-9 Unit, Evidence Technician" before the phrase and public relation duties" The Union's argument is underlined above.

The City argues that those employees selected to undergo this specialized training (K-9 Unit and Evidence Technician) were relieved from their regular duties while training and paid their full salaries while in training. The City also argues that it already has one person trained in each category of K-9 Unit and Evidence Technician.

The Union is proposing three (3) K-9 Unit employees and four (4) Evidence Technicians.

The City contends that this specialized training (K-9 Unit and Evidence Technician) when an officer is called upon to utilize this specialized training is part of their duties as Police Officers.

RECOMMENDATION

Maintain the language of Section 26.03 as written. I believe the term "First Responders" referred to Fire Fighters and became popular colloquial usage after 911. That being said, it is logical to conclude that the duties of a Police Officer also consider him/her when called upon; as first responders. That's what they get paid for.

Article 27 - Miscellaneous

The OPBA proposes to require the City to follow Ohio law as it relates to military leave and its impact on bargaining unit employees. Currently, military leave is provided by an old city

ordinance which is far less generous to active military members than the state law. There is no reason for this disparity.

DISCUSSION

I call the parties attention to Article 12, Section 12.01, Conformity to Law, of their current Collective Bargaining Agreement. The parties are in agreement to add a new section for military leave.

RECOMMENDATION

Add a new section that reads as follows:

Section 27.10 - Employees will be granted military leave pursuant to the terms of Ohio Revised Code Section 5923.05.

Article 36, Section 36.03 (F) of the Grievance Procedure reads as follows:

“f) The existence of this Grievance Procedure, hereby established, shall not be deemed to require any employee to pursue the remedies herein provided and shall not impair or limit the right of any employee to pursue any other remedies available under law, except that any employee who pursues any other available remedy, other than provided by this procedure, shall automatically have waived and forfeited any remedies provided by this procedure.”

I have thoroughly reviewed the parties’ Grievance Procedure and Arbitration Procedure. Your permanent panel of arbitrators is among the best in the business. I might be accused of bias since I mentored under Dr. Alan Miles Ruben, Esq.

Both procedures (The Grievance Procedure and the Arbitration Procedure) are well documented, cover all points and are one of the finest Grievance/Arbitration procedures I have

seen. This makes the above section (Article 36, Section 36.03 (F) in my opinion superfluous in its entirety.

RECOMMENDATION

Delete subsection (f) as shown above from the grievance procedure. The grievance procedure is the sole mechanism for challenging alleged violations of the Collective Bargaining Agreement.

Article 31 - Duration

RECOMMENDATION

This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the OPBA, and, except as otherwise noted herein, shall become effective upon ratification or the issuance of a conciliator's award and shall remain in full force and effect until December 31, 2017.

TENTATIVE AGREEMENT

Any tentative agreement reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The Fact Finder respectfully submits the above recommendations to the parties' this 23rd day of November, 2015 in Belmont County, Ohio.

Note: You don't get what you deserve, you get what you negotiate

Richard D. Sambuco

Richard D. Sambuco, Fact-Finder

CERTIFICATE OF SERVICE

I certify that on the 23rd day of November 2015, I served the foregoing report of Fact-Finding upon each of the parties' to this matter by Electronic mail a copy to them at their respective e-mail addresses as shown below:

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Jon M. Dileno, jmd@zrlaw.com
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I further certify that on the 23rd day of November 2015, I submitted this Report by Electronic mail to the State Employment Relations Board, 65 East State Street, Columbus, OH 43215-5213

Richard D. Sambuco, Arbitrator
Richard D. Sambuco, Fact-Finder