

I. PROCEDURAL BACKGROUND

This matter came on for hearing on August 4, 2015, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on July 9, 2015. The hearing was conducted between the City of South Euclid, Ohio (“Employer” or “City”), and the South Euclid Firefighters Association, IAFF Local 1065 (“Union”), at the South Euclid City Hall located at 1349 South Green Road, South Euclid, Ohio 44121. The Union is the sole and exclusive bargaining representative of all full-time employees in the classifications of fire fighter, fire prevention officer, lieutenant and captain as set forth in Article 1 of the collective bargaining agreement. (Union Ex. 1). At the time of the hearing, the bargaining unit was comprised of approximately 21 firefighters, four lieutenants, three captains, and one fire prevention officer. (Union’s Position Statement, at 1).

The parties reached several tentative agreements regarding the following articles, or portions thereof, contained in the collective bargaining agreement: Article VIII- Uniform Allowance; Article XII- Wages, Hours and Overtime; Article XXIX- Duration Modification and Termination; Article XXX- Physical Fitness Proficiency. (Union Ex. 2). As of the fact-finding hearing, the following issues remained open and are properly before the fact-finder for resolution:

- Issue 1: Article 12, Section 12.11(a) - Paramedic Pay
- Issue 2: Article 12, Section 12.12 - Officer Differential

The fact-finder incorporates by reference into this Report and Recommendations any provision of the current collective bargaining agreement not otherwise modified during

negotiations, as well as the abovementioned tentative agreements. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The 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 the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Introduction

The General Position of the Union

The Union asserts that the City has refused to agree to a modest improvement in the officers differential and to return the firefighters to their previous paramedic pay level despite the firefighters willingness to give up pay and benefits in purportedly lean financial times. In support of its position, the Union points out that the City's income tax revenue has increased from \$8,210,134.00 in 2010 to \$9,560,388.00 in 2014. During the last several years, the City's General Fund expenditures have remained relatively stable. As a result, the General Fund balance has increased from \$3,398,524.00 in 2011 to \$4,736,782.00 in 2014. Based upon the City's 2015 budgeted General Fund expenses of \$16,301,147.00, there will be a 30% carryover balance. The carryover would still be 26% even if outstanding encumbrances of \$499,854.00 as of year-end 2014 are considered.

While income tax revenue and the General Fund balance have increased over the past three years, the wages afforded the firefighters have decreased. The firefighters were paid wages of \$2,449,592.00 in 2012 as compared to \$2,350,089.00 in 2014. The total expenses for the Fire Department have also decreased from \$3,762,943.00 in 2012 to \$3,248,320.00 in 2014. In addition to a decrease in their wages, the firefighters have also agreed to multiple concessions, including a wage freeze and foregoing a 27th pay during 2010; cutting their uniform allowance from \$1,250.00 to \$350.00, reducing the starting salary for new hires from \$47,828.00 to \$40,000.00, and creating an overtime bank in 2011; elimination of the physical fitness

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proficiency payments for 2013 and 2014, and increasing health insurance premium contributions up to 15% for the remainder of 2013 and 2014. The above concessions, not including the creation of the overtime bank and increase in health insurance premium contributions, saved the City approximately \$182,694.00 according to the Union. The City also saved approximately \$70,000.00 when it decreased the minimum shift staffing level from seven to six in 2014. Although the minimum shift staffing level is not set forth in the collective bargaining agreement, the Union agreed not to make any public objections regarding the decrease in shift manning when requested by the City.

While the total number of calls responded to by the Fire Department slightly decreased from 3,441 in 2013 to 3,375 in 2014, EMS responses increased by 3% in 2014. The Union points out that emergency responses have steadily increased over the past ten years. Along with the increase in EMS responses, charges and payments received from EMS billing also increased during this period. Although the run volume has increased, the Fire Department's response staffing decreased from 34 response personnel on staff in 2009 to only 27 in 2014.

At hearing the Union reiterated its position regarding the City's healthy financial condition as reflected in the Comprehensive Annual Financial Report (CAFR). (Union Exhibit 3). Specifically, there has been a steady increase in the General Fund balance. (Union Exhibits 4 and 5). It points out that municipal income tax which is the principal source of revenue for the City has steadily increased. (Union Exhibit 6). The Union reiterated that the firefighters' workload has increased while response staffing has decreased. (Union Ex. 9). According to the

Union, the City's firefighters have the second highest work volume among comparable fire departments in other cities. (Union Exhibit 10).

The Union reiterated the details of the various concessions discussed above, which the firefighters have agreed to over the past few years. As noted above, the Union has saved the City over \$182,000.00 since 2010. In regard to the paramedic bonus, the Union maintains that it was "always told that it was a temporary cut and the understanding was that it would return." The Union has always worked with the City, however, the City "wants to just keep [paramedic pay] at the flat rate even though the agreement was to go back" to the percentage based payment. The Union asserts that both external and internal comparables support its position in this case. (Union Exhibits 15, 16, 17).

According to the Union, the total cost of its proposals is approximately \$32,000.00 over the term of the new contract. It asserts that the City is "in a position to give back what in comparison to the cost of the contract as a whole is small." The record establishes that the General Fund balance has improved over the past several years and a "30 percent carryover balance is double what it needs." The Union claims that comparable cities do not have a 30 percent carryover with the exception of Beachwood. The CAFR also suggests that the housing situation is improving and the City "holds this out as an area of pride." It points out that a document posted in City Hall indicates that there was a 14% increase in home values in 2014. (Union Ex. 20). The Union was informed that passing the safety levy "would make things so much better." However, the City is still using the same cuts from the State of Ohio to justify its position. The evidence reveals that the City has historically budgeted for less than it actually

received. The Union's proposals are both affordable and warranted as a result of the prior concessions.

The General Position of the City

The position of the City “. . . from the beginning of the negotiations was to maintain the paramedic differential at a flat \$2,647 and not to agree to any increase in the Officer Differential.” (City Position Statement, at 1). The City subsequently offered to increase the flat rate paramedic pay to \$2,747.00. However, this proposed increase was declined by the Union. The City points out that the parties agreed early on in negotiations to wage rate increases of two (2) percent each year under the new contract, and it negotiated a new health insurance contract which reduced the bargaining unit employees' premium contributions by four percent.

The City maintains that it has suffered significant losses in revenue during the term of the current contract. The most significant loss has been approximately \$1.2 million from the local government fund. Additionally, the City lost money from the commercial activity tax and the inheritance tax has been eliminated. Moreover, income tax revenue is expected to decrease by approximately \$300,000.00 and the City will not be receiving a \$100,000.00 workers' compensation refund which it had expected. According to the City, most of the safety forces levy which brings in approximately \$1.1 million each year goes to pay the pension contributions for employees in the Police and Fire Departments. Without this levy money, the City would have been forced to layoff safety force employees. The City asserts that due to the financial hardship which it has suffered, it is imperative to “. . . be in a position to not only cut costs wherever it can

but to also have more stability in its expenditures so it can properly budget for the future.” (City Position Statement, at 2-3).

The City emphasized that the parties have a “very different” view regarding the financial data. Over the past five years, the City has suffered a dramatic loss of income. Specifically, revenue from local government funds has decreased by \$1.2 million; commercial activity taxes have decreased; the inheritance tax has been eliminated in Ohio; and income tax has decreased by \$300,000.00. Additionally, the City will not be receiving an expected \$100,000.00 workers’ compensation refund. The City also discussed a TIF regarding the Cedar Center project and the taxes utilized to “pay down the debt.” According to the City, the bottom line is that income has been reduced over the past several years.

The City acknowledges that the Union “has worked with it more than other units,” and it appreciates their effort. However, it points out that layoffs would have occurred if not for the previous concessions volunteered by the Union. Additionally, the number of runs by the firefighters has significantly decreased since 2014 or early 2015 as the City no longer responds to the large number of mutual aid calls from East Cleveland. The City also notes that it has restored five percent in additional compensation related to a reduction in health insurance contributions by bargaining unit employees.

Finance Director Smith indicated that property tax revenue has decreased and inheritance tax is no longer distributed to cities. (City Ex. A). Additionally, the local government fund has decreased by approximately \$500,000.00 per year, and “no more commercial activity tax is collected by the City.” (City Ex. A). He also noted that RITA distributions have decreased

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\$308,068.00 this year to date from last year. (City Ex. B). According to Finance Director Smith, the City is “right at its projection for the year with a \$3.4 million General Fund balance [as of June 2015].” (City Ex. C). While there is “deficit spending” by the City, he acknowledged that the \$1.1 million which is received each year from the safety levy is spent on salaries and pensions for the police and fire departments and does not come out of the General Fund. The record accurately reflects that deficit spending is approximately \$500,000.00 per year, and this amount “cannot be ignored and pushed aside.”

On cross-examination, Finance Director Smith stated that the financial statements contained in the CAFR are prepared under the accrual basis while the City operates on a cash basis. He also confirmed that the General Fund reflects a cash basis. Finance Director Smith acknowledged that the Union’s proposal would cost the City approximately \$30,000.00 over three years.

The City recognizes that the bargaining unit employees do a good job, however, they are compensated fairly well and will receive two percent wage rate increases each year under the new contract. Additionally, the significant savings under the Cuyahoga County Health Plan which the City obtained in 2015 was passed on to employees. The City maintains that there have been “huge increases” in health care costs and it must “get a grip on its finances.”

Issue 1: Article 12, Section 12.11(a) - Paramedic Pay

Position of the Union

The current contract language in Section 12.11(a) provides as follows:

Fire fighters certified and assigned as paramedics will be compensated an additional 4% per year computed on the Class A third year rate. This provision (additional 4% per year) shall be suspended for the current contract period only. Effective January 1, 2012 through December 31, 2014 the paramedic differential will be a flat \$2,647 amount each year of the Agreement.

The Union proposes that the parties delete the temporary, concessionary terms which reduced paramedic pay to a flat rate of \$2,647.00 and return to the language which was in place as of 2011. Specifically, paramedics will be compensated an additional 4% per year computed on the Class A third year rate. According to the Union, it agreed in good faith to temporarily freeze the paramedic pay with the express understanding that it would be for the 2012 - 2014 contract period only, and the percentage-based payment would be reinstated in 2015. However, the City refuses to honor this agreement and seeks to permanently make paramedic pay a flat amount. The Union points out that Section 12.11 expressly states the percentage-based payment shall be suspended for the current contract period only. It maintains that a return to the percentage-based paramedic pay will cost the City approximately \$20,000.00 over the term of the three-year contract. The City's financial condition as well as both internal and external comparable data support the Union's proposal to reinstate the percentage-based paramedic pay.

The Union points out that the temporary concession regarding health insurance was to be restored in accordance with the parties' agreement and the same logic applies to paramedic pay.

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However, paramedic pay has not been restored by the City as agreed. The Union questions why the parties would agree to suspend the percentage based paramedic pay for the current contract period only if they did not intend upon restoring it in the next contract.

Position of the City

The City is opposed to percentage-based paramedic pay and seeks to maintain the flat rate language in the current contract. It points out that “[b]y having the paramedic bonus equal to a percentage of the base pay rate, the bonus amount grows each and every year exponentially.” (City Position Statement, 3). The City asserts that it must be able to budget appropriately based on its projected revenues. Therefore, the City proposes its last offer of a flat rate of \$2,747.00 for the years 2015 through 2017.

According to the City, the paramedic bonus provision in the contract clearly provides that it is “open to negotiations” by the parties. Further, the paramedic pay language is unlike the language regarding health insurance, which specifically stated that monthly insurance premiums would be returned effective January 1, 2015. Although the Union’s proposal “may not sound like a lot of money,” the City reiterates that the paramedic bonus grows exponentially each year under the proposed language. The City maintains that it needs to exercise self-control regarding its finances. Therefore, a flat rate paramedic bonus is more appropriate under the circumstances. Furthermore, the Union’s comparables “do not take into consideration the income generated and the revenues and general balances of these other cities.” The City asserts that the comparable

cities identified by the Union “have more money and can afford to pay more.” Nonetheless, the City stands by its most recent offer regarding paramedic pay.

Final Recommendation

The fact-finder recommends that Section 12.11(a) of the collective bargaining agreement should contain the following language as proposed by the Union: “Fire fighters certified and assigned as paramedics will be compensated an additional 4% per year computed on the Class A third year rate.” The Union’s proposal is fully warranted and recommended for the following reasons.

The testimony and documentary evidence establishes that the City’s financial condition has improved during the term of the current contract. The data indicates that municipal income taxes, which represent the largest source of revenue for the City, increased each year from 2010 through 2014. (Union Ex. 6). During the past several years, the City’s General Fund expenses have remained relatively stable. (Union Ex. 4). As a result, the General Fund balance increased by over \$1.33 million during the period of 2011 through 2014 (\$3,398,524.26 in 2011 to \$4,736,782.03 in 2014). (Union Ex. 4). Based upon the City’s budgeted expenses for 2015, there will be a significant General Fund carryover balance. The record indicates that the City will have a General Fund carryover balance which is nearly double the minimum percentage recommended by the Government Finance Officers Association (GFOA). Additionally, the fact-finder notes that the City’s receipts exceeded disbursements in 2014, contrary to the City’s projection that disbursements would exceed receipts. (City Ex. C).

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Under the Union's proposed language, the paramedic bonus would increase to \$2,851.00 in 2015; \$2,908.00 in 2016; and \$2,966.00 in 2017. (Union Ex. 18). The aforementioned increases would not change the relative standing of the City's fire fighters in relation to fire fighters employed by comparable cities as it pertains to both paramedic pay and total compensation. (Union Ex. 15). An analysis of the data presented by the parties regarding external comparables provides further support for the Union's position.

According to the Union, its proposal to modify the paramedic pay provision will cost the City a total of \$21,168.00 over the term of the contract. The City does not dispute this cost projection. While the fact-finder recognizes the City's desire and need to control its expenditures and operate in a financially sound manner in serving the needs of its citizens, there is no evidence that the City is unable to afford the slight increase in cost associated with restoring the percentage based paramedic pay language, which language was included in past collective bargaining agreements. In recommending the Union's proposal, the fact-finder also recognizes the various concessions which the bargaining unit members have made over the past several years.

Issue 2: Article 12, Section 12.12 - Officer Differential*Position of the Union*

The Union seeks to increase the officer differential from 11.5 percent to 12 percent effective January 1, 2015. It points out that the bargaining unit employees are "... slightly behind the City's Police Officers in terms of annual compensation, despite the City continually bargain[ing] the 'pattern' between the Fire and Police units." (Union Position Statement, at 8).

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Accordingly, the Union seeks the same officer differential for the both the Fire and Police Departments. According to the Union, increasing the officer differential to 12 percent would cost the City less than \$12,000.00 over the term of the contract. The City has the financial ability to bring the officer differential between the Fire and Police Departments “into parity,” and the external comparables support the requested increase. The Union asserts that there is “no quid pro quo for 11.5 percent versus 12 percent” regarding the officer differential received by the City’s fire fighters and police officers. There is no contract negotiation evidence to support this difference between the firefighters and police officers.

Position of the City

In the past, the Union had the opportunity to negotiate this percentage but chose to concentrate its efforts in other areas of the contract. The Union now seeks to be equal with the Police unit which receives an officer differential of 12 percent. However, the police officers bargaining unit made an effort over the years to increase the officer differential at the cost of other items in the collective bargaining agreement. The City maintains its position that the officer differential should not be increased as proposed by the Union.

The City asserts that collective bargaining agreements for police officers and fire fighters are “not always equal.” In fact, the City has “never heard of keeping police and fire the same.” The current officer differential has been in place for some time and this is a “different era than the 1990's.” The population of South Euclid has decreased from 29,000 to 21,000 and there is little industry in this “bedroom community.” According to the City, while the Oakwood project

and Wal Mart resulted in increased tax revenues of approximately \$350,000.00 in 2014, “all of this is going toward debt service.” The City acknowledges that a safety levy which passed in 2014 generates \$1.1 million of revenue per year for the police and fire departments. However, this levy only prevented layoffs and is a “temporary fix for a long-term problem.”

Final Recommendation

Based upon the evidence of record presented in this case, the fact-finder recommends that there should be no change to the language contained in Article 12, Section 12.12 of the collective bargaining agreement regarding officer differential. The Union presented insufficient evidence in support of its position that the City’s fire fighters and police officers should receive the same officer differential pay. There is no evidence that the parties previously engaged in pattern bargaining regarding this issue. Additionally, the fact-finder notes that the total compensation afforded employees of the City’s Fire and Police Departments is relatively equal. (Union Ex. 17). The fact-finder also determines that the data presented by the Union regarding external comparables does not, under current facts and circumstances, provide a sufficient basis to modify long-standing, current contract language.

/s/ Jonathan I. Klein
Fact-finder

Dated: September 15, 2015

CERTIFICATE OF SERVICE

A copy of this Fact-finding Report and Recommendation was served on Ryan J. Lemmerbrock, Esq., Muskovitz & Lemmerbrock, Attorney for Union, at The BF Keith Building, 1621 Euclid Avenue, Suite 1750, Cleveland, Ohio 44115, lemmerbrock@mllabor.com; and upon Michael P. Lograsso, Esq., Director of Law, City of South Euclid, at 1349 South Green Road, South Euclid, Ohio 44121, mlograsso@seuclid.com; and upon Donald Collins, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213, donald.collins@serb.state.oh.us and Med@serb.state.oh.us; each by electronic mail this 15th day of September 2015.

/s/ Jonathan I. Klein
Fact-finder