

STATE OF OHIO.
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-finding between:

The City of Middleburg Heights, Ohio : Case No. 2016-MED-07-0701
and : Report and Recommendations
International Association of Fire Fighters : Margaret Nancy Johnson
Local 2018 : Fact-finder

Statement of the Case

Following efforts at mediation, this matter came on for hearing on March 21, 2017, in Council Chambers at City Hall, Middleburg Heights, Ohio. Appointed by the State Employment Relations Board pursuant to ORC 4417.14(C)(3), Margaret Nancy Johnson presided as fact-finder. The parties mutually agreed to extend the period of fact-finding as provided for in the Ohio Administrative Code and these recommendations are now issued in compliance with the agreement of the parties.

Ryan J. Lemmerbrock, Attorney with Muskovitz and Lemmerbrock, argued the case for Local 2018 of the International Association of Fire Fighters (“Union” or “IAFF”). Attorneys Jazmyn J. Stover and Gary E Ebert, Seeley, Savidge, Ebert & Gourash Co., LPA, represented Middleburg Heights (“City”). Both parties had the opportunity to make opening statements, to examine and cross-examine witnesses, and to introduce into the record documentary evidence identified and discussed in this Report as Exhibits. In compliance with ORC 4117.14(C)(3)(a) both parties submitted timely position statements for review by the fact-finder prior to the hearing.

The bargaining unit includes eighteen (18) Firefighters/Paramedics, three (3) Lieutenants, and three (3) Captains, for a total of twenty (24) unit members who provide emergency medical as well as fire prevention and suppression services. Housed in a single fire station, the unit works three (3) twenty-four (24) hour shift rotations, each staffed with eight (8) unit members—six (6) Firefighters, one (1) Lieutenant and one (1) Captain.

Located southwest of Cleveland off of Interstate 71 and north of Interstate 80, within Cuyahoga County, the City maintains a “real property portfolio of 60% residential and 40% commercial,” (Union Exhibit 2, vii) more fully discussed hereinafter. In addition to the Fire Department, municipal services maintained by the City include Police, Parks and Recreation, Services, and Building Departments. The City operates under a Charter providing for a mayor and seven-member Council.

The parties have a mature and respectful bargaining relationship, most recently requiring fact-finding in 2007, which findings and recommendations were mutually accepted by the City and the bargaining unit (Union Exhibit 31). Expiring on December 31, 2016, the current Collective Bargaining Agreement sets forth, as did preceding Agreements, wages, terms and conditions of employment for a two (2) year duration.

In these current negotiations, the City introduces an employee contribution to health insurance premiums, previously covered 100% by the City. While the Union accepts and agrees to a gradual implementation of employee participation in health insurance costs, the underlying tension in these negotiations has been wages and financial benefits to off-set the proposed employee cost in health care.

Issues

The following issues have been presented to the fact-finder for recommendation: Article 7, Sections 7.01 and 7.04 (Probationary Period); Article 13, Sections 13.01 (Holidays); Article 14 (Sick Leave); Article 15 (Funeral Leave); Article 16 (Injury Leave); Article 17, Sections 17.04 and 17.07 (Workweek and Overtime); Article 20 (Premium Pay); Article 23 (Longevity); Article 24 (Salary Schedule); Article 26 (Insurances); and Article 40 (Duration).

Criteria

In submitting the recommendations which follow, the fact-finder has considered the statutory criteria set forth in ORC 4117.14C)(4)(3) and OAC Rule 4117-9- 05(K), to-wit: past collectively bargained agreements between the parties; comparison of the unresolved issues relative to the employees in the bargaining unit with those resolved issues of other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved; 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 standards of public service; the lawful authority of the public employer; stipulations of the parties; other factors, normally and traditionally taken into consideration in the determination of issues submitted to a dispute settlement procedure.

Positions of the Parties

1. Article 7 Probationary Period – Section 7.01

Union

The Union submits that its proposal relative to 7.01 is a “housekeeping” item. Since the City currently requires all Firefighters to hold State Firefighter and Paramedic certifications, the current language authorizing “at will” terminations for failure to satisfactorily complete such training is, the Union contends, out-dated.

City

While the City did not argue against the modification, current language provides management with an enforcement mechanism, ensuring paramedic certification.

2. Article 7 – Probationary Period – Section 7.04

City

The City proposes contract changes allowing a written exam and/or assessment center evaluation for the purposes of promotions. Additionally, the City proposes eliminating language requiring twenty-four (24) months in the next lower rank prior to promotion. Rationale for the change is the ability of the Employer to manage its operations and staffing, and avoiding a potential inability of the Employer to fill positions. The proposal does not adversely affect any unit employee.

Union

Opposing the City proposal, the Union submits that promotions must be based on merit and fitness ascertained by a competitive exam. There is no justification for changing language under which the parties have operated for a considerable time, which is in compliance with state constitutional requirements, and which ensures an objective promotional determination.

3. Article 13- Holidays and Vacations – Section 13.01

Union

The Union proposes increasing holiday hours from 120 to 144 in the twelve calendar months.

Additionally, the Union proposes paying employees who work on specified holidays at an overtime rate. Holiday enhancements are proposed by the Union to partially offset the significant increase in employee costs pursuant to the insurance proposals of the City. Without increasing wages and benefits, as a consequence of modifications to health care costs, employees will incur a significant net loss over the life of the new agreement.

City

At a time when it is endeavoring to curtail costs, the City opposes increasing the holiday benefits. Holiday proposals made by the Union substantially add to employer expenses as well as creating staffing problems.

4. Article 14- Sick Leave- Section 14.16

As current language is ambiguous, the Union proposes language clarifying that a unit member could donate accrued sick leave to any full time employee of the City. The City indicated that it is not opposed to this language, but there was no temporary agreement on the issue. Accordingly, the Fact-finder will incorporate the agreement into the recommendations which follow.

5. Article 15- Funeral Leave -Section 15.01

Union

All other bargaining units in the City receive three work days off for the death of a spouse, child, parent or sibling. To achieve internal comparability, the Union proposes two tours of duty with pay for deaths in the immediate family and three tours off with pay for the death of a spouse or child.

City

Without opposing the change, the City points out that since firefighters work “tours” and not “days,” firefighters receive comparable time off. Additionally, the City points out that additional tours off create scheduling problems as well as overtime costs.

6. Article 16- Injury Leave

City

The City proposes modifying the Injury Leave language of Section 16.01 requiring employees injured as a result of an on-duty injury to be certified by a medical provider as unable to work for at least two tours of duty before wage continuation is granted to the employee. Citing similar language in comparable cities, the City contends that its proposal is reasonable and not an attempt to reduce benefits of employees having incurred an on the job injury. It does, however, enable the City to control costs.

Union

In the absence of any evidence of employee abuse of injury leave or of any justification for this proposal, the Union seeks to retain current contract language. There is no reason to increase requirements for an employee to receive paid leave for on the job injury.

7. Article 17-Workweek and Overtime- Section 17.04 (Compensatory Time)

Union

Again, to compensate for additional insurance costs incurred by employees, the Union proposes increasing compensatory time from 240 to 360 hours, while maintaining the 240 hour limitation on carryover. Rather than increasing costs, the Union contends the modification would enable employees to

take earned overtime as paid leave.

City

Because it significantly increases overtime costs, the City objects to this proposal.

8. Article 17-Workweek and Overtime -Section 17.07 (Duty Time)

City

In compliance with Fair Labor Standards, the City proposes eliminating sick time as “duty time” for the purposes of calculating overtime. This proposal is consistent with language in labor contracts of comparable cities. Moreover, implementation of this modification enables the City to better control costs.

Union

Removing sick leave from “duty time” will result in the employee being unfairly penalized for legitimate use of sick leave. Since there is no record of abuse of sick leave by unit members, the concession is unwarranted. This provision has been included in the agreement for many years. Indeed, a prior attempt to remove the language was rejected by a fact-finder.

9. Article 20 – Premium Pay Section- 20.03 - Training Hours for Paramedic Certification

City

Consistent with State requirements, The City proposes reducing training hours from forty (40) hours currently provided to twenty-nine (29) hours. Again, rationale for the proposal is to control costs. Unit members receive a substantial benefit as training hours are paid at an overtime rate.

Union

Opposing the proposal the Union argues this benefit has been agreed upon and has been in place for many years. There simply is no financial justification for changing a contract term in a way which will result in significant loss to unit members.

10. Article 20 – Premium Pay -New Language – Training

Union

The Union proposes language that will grant additional training at an overtime rate. Since more training is beneficial both to the unit and the City, the proposal is reasonable and will not create a financial burden on the City finances.

City

At a time when the City is endeavoring to contain costs, language which creates a new financial burden is not acceptable.

11. Article 23 – Longevity

City

The City proposes grandfathering in current unit members but eliminating longevity pay for new hires. A review of comparable bargaining units establishes that this unit is generously compensated even without longevity. Current employees will not lose this benefit.

Union

Longevity Pay which this unit receives lags behind comparable professional fire departments in the area. The proposal would reduce current income as well as pension income for new hires. Moreover, the proposal would establish a disparity within the unit which undermines the cohesion so essential within a fire department.

12. Article 24- Salary Schedule

While the Union proposes a 3% in 2017, 3.25% in 2018 and a 3.5% increase in 2019, the City proposes a 2% wage increase. The Union argues that its proposal is necessary to offset the additional costs in health insurance adjustments which it is willing to undertake. Without the increase proposed by the Union, the members will actually have their income reduced. As a consequence of the financial stability of the City, the unit has compared favorably with neighboring communities in terms of compensation; but, absent some justification, unit members should continue to receive an income commensurate with previously negotiated rates. The City has the ability to pay the 3% which the Union proposes and the increase is justified by the additional costs the employees are incurring.

The 2% increase the City has proposed is reasonable and in line with comparable increases in the region as well as within cities and fire departments statewide. Public employees have an obligation to constituents to manage funds responsibly. Given the significant state-wide budget cuts in local funding and estate taxes, as well as losses in interest income and property tax collections, it is imperative that the City, like municipalities throughout Ohio, exercise restraint and caution in fiscal management. This unit is already compensated well in comparison to comparable jurisdictions. As explained by the Finance Director at the hearing, recent general fund revenues off-setting general fund expenditures are attributable to diversions from the capital funds as well as income from estate taxes, an income source now legislatively eliminated.

13. Article 26 – Insurances

Both the City and the Union recognize that an adjustment to the current Insurance provisions is appropriate, and that membership must begin to contribute to health insurance costs. The dispute arises as to implementation of the insurance provisions.

The City seeks a 10% employee contribution towards the monthly premiums and an increase in the deductibles from \$100/individual and \$200/ family deductible to \$500 and \$1,000, respectively. Arguing that its proposal is in line with comparables, the City contends that the insurance plan it maintains is “rich” in benefits to employees but that insurance costs must be contained. Deletion of language in the current insurance provisions as proposed by the City is due to the fact that the language is already out of date and is not consistent with actual provisions set forth in the Plan. Citing SERB Insurance reports for 2015 and 2016, the City contends that the “vast majority of medical plans” require employee participation and that the City is out of step with regional and state wide comparables. It further argues that employee contributions provide an incentive to keep costs down.

Accepting the concept but rejecting the City’s proposal, the Union argues for a more gradual implementation in the shifting of costs to employees. If the City plan were to be adapted, bargaining unit members with family coverage would lose \$3,440 in income for 2017. Moreover, the City proposes deleting current contract language relative to co-pays, examinations, prescriptions, in a manner that would permit unilateral changes in coverage.

There is no financial reason for the abrupt and harsh changes in language that the parties have agreed upon for many years. A Health Insurance fund maintained by the City has sufficient assets without burdening unit members with a substantial income loss. The Union proposes a monthly contribution in the amount of 3% of the COBRA rate with a maximum of \$100 for family coverage and

\$40 per month for single coverage in 2017; 7% in 2018 with caps at \$150 and \$60; and 10% in 2019 with caps at \$200 and \$80. Additionally, the Union proposes deductibles of \$400 for family coverage and \$200 for single coverage.

14. Article 40 Duration

Although the parties have consistently agreed upon two year contracts, the Union proposes a three year Agreement. A two year Agreement would put the parties back at the table within a year. Moreover a gradual change in insurance provisions over a three year period best accomplishes the goal of achieving employee participation. The City has not opposed this proposal; nor has it argued in favor of retaining the two year terms.

Discussion

Financial Overview

In describing the “economic condition and outlook” of the City for the 2015 Comprehensive Annual Financial Report, hereinafter “CAFR” (Union Exhibit 2), Financial Director, Jason Stewart, identified the location of the City as “one of the greatest assets” (*Id.*, vii). Proximity to Cleveland Hopkins Airport as well as easy access to three interstate highways “has contributed to the economic stability of the City” (*Id.*) Indeed, in the last decade, the City created or retained over 6,500 jobs which currently generate an annual estimated payroll of nearly \$190 million.

The health services industry is a major contributor to the business growth of the City. In addition to Southwest General Health Center, which is the largest employer in the City, Metro Health System has an ambulatory Health Center and Cleveland Clinic operates four specialized health services facilities. Rather than dependence upon a single industry, however, the City has diversified commercial interests including hotel, retail, freight and shipping.

Unlike many cities in northeast Ohio, Middleburg Heights has not been hampered by a heavy reliance on manufacturing (See Union Exhibit 4, p.2). Thus, the City cannot be painted with the same brush used to depict other municipalities within the area. An opinion that “recovery [from 2008] has taken a painfully long time” (SERB Case No. 2015-MED-10-1164, cited by the City in its Opening Statement) may aptly describe some northeast Ohio cities, but it does not accurately represent the economy of this City.

Rather, economic expansion has been and continues to be planned and developed. According to the 2015 CAFR, a site evaluation and assessment has been conducted for a 45 acre site on Bagley Road and land use for another 40 acres on Pearl Road was being studied. At the time of the issuance of CAFR, a new automobile dealership and a new hotel were under construction. Plans were also under consideration for a new Residence Inn.

In a December 21, 2016 Memorandum setting forth an Economic Development Summary Report for 2016, the Director of the Department of Economic Development noted that the Residence Inn was, in fact, under construction. Additional projects referenced in the Economic Development Report include an addition to a Quadax Incorporated building, a new roadway to “facilitate 200 new jobs for the expansion of Quadax,” construction of new facilities and the expansion of existing enterprises (Union Exhibit 5).

When issuing the City its Aa1 bond rating, a “healthy economy” was cited by Moody’s Investors Service in its January 9, 2017 Comment (Union Exhibit 4). Additionally, Moody’s reported “a strong socioeconomic profile with a solid tax base” (*Id.*). Specifically, the Service noted a full value per capita stronger than the median in the United States and a healthy median family income. In its CAFR, based upon figures from the United States Bureau of Census, the City stated the median household income for 2015 and 2014 to be \$66,337 (Union Exhibit 2, p.114).

As indicated in the 2017 Budget Report, income tax revenue accounts for approximately 78% of General Fund Revenue (Union Exhibit 8, p.6). Since 2010, revenue from income tax has continuously increased and further increases are estimated (*Id.*, City Tab 6). In a December 2016 Financial Summary, the Finance Director noted that the 2016 income tax collection of \$19,862,998.15 was 4.2% above the 2015 collections (Union Exhibit 6). In the prior year, the 2015 income tax collection was 2.93% above the 2014 collections. For 2017, the City anticipates income tax receipts to increase approximately 3% (Union Exhibit 8, p. 4). In the Budget Report, the City “assumes income tax collections will see a 3% growth each year” after 2017 (Union Exhibit 8, p. 70). An assertion regarding stagnant public wages is simply not sustained by the income tax growth experienced by the City (City Opening Statement).

Other sources of income include property tax, charges for services, fines, fees and permits. While the City notes a “slow rebound in the real estate market,” it assumes a “moderate 1% growth [in property tax collections] from 2017-2021 (*Id.*)”. Some of these other revenue sources are assumed to remain “flat” or “low,” but the City anticipates “fees for services are projected to grow at a 3% rate for this forecast” (*Id.* p. 71).

Revenue growth has enabled the City to maintain a General Fund balance fairly consistently exceeding the level recommended by the Government Finance Officers Association (“GFOA,” See Union Exhibit 8, p. 7). Significantly, though, while the fund balance has experienced considerable fluctuation, recent figures indicate a decline in the annual fund balance, and a decline in the balance is forecast for fiscal year 2017. Indeed, upon reviewing City finances, the International observed “the general fund balance decreased nearly 22% from FY13 to FY15” (Union Exhibit 3, p.6).

Middleburg Heights confronts the same dilemma with which all public employers must grapple-- expenditures exceeding revenues. To compensate for the shortfall, the City has, in 2012 and 2106 “diverted” assets from capital funding (See City Tab 6). Excluding “transfers in,” in 2015 total revenue lagged behind expenditure by \$1,763,406 (Union Exhibit 8, p. 10). Arguably, unless otherwise restricted, “transfers in” are what public employers do to maintain operating budgets, but taking funds allocated for one purpose to pay for another is simply not sustainable in the long term. For fiscal year 2016, only with transfers has the City been able to balance revenue with expenditure. In 2014, 2015 and 2016, general fund expenditures exceeded general fund revenue and the same is true of projections for 2017 (See Chart, Union Exhibit 8, p. 7).

Also, like public employers within Ohio, the City has had to adjust to the state legislature which has significantly eliminated or reduced revenue sources such as income from Local Government Funds and Estate Tax collections. A chart provided in its Operating and Capital Budget for 2017 starkly illustrates the impact of these reductions on the City (See Union Exhibit 8, p.3, see also City Tab 6)). Nonetheless, adjustments have been effected, and as indicated by the Union, this City has been able to more than offset those losses by increases in income tax revenue (Union Position Statement, p. 4). Additionally, the City “continues to benefit from low gas prices” and departmental budgets have accordingly been reduced by 15% to account for the lower prices (Union Exhibit 8, p. 5).

In the 2017 Budget Report the City observes the desire of the City to attract and retain “good quality employers to our community” (*Id.*) Good services, engendered by a committed and competent work force, are a significant element in that objective.

Moreover, as stated above, Middleburg Heights is not your typical northeast Ohio city. Taxpayers, who have the ability, move into municipalities like Middleburg Heights for the level of services rendered and the quality of life experienced. These services and this quality have a cost.

Even so, with “economic challenges” confronting the City, it has been required to take “a different approach” to budgeting and to be “proactive in finding solutions for cutting costs and adjusting how services are delivered” (*Id.* p. 3). Proposals presented at fact-finding are part of this process. While it

is not labor that is making a “strong, forceful demand” (See City Opening Statement) in these negotiations- nor does it appear to have done so in the past- this unit has benefited from health insurance provisions which are not sustainable and which the City now seeks to modify.

Health Insurance

In its Opening Statement, the City has opined that “employee contributions [to health insurance] give employees ‘skin in the game.’” This argument has been heard before; and while theoretically reasonable, the fact-finder is not convinced it should be applicable to health insurance. Health care is preventative as well as therapeutic. Moreover, in a developed nation, health care should not be a “chance;” nor should it require a “choice” between medical attention and other needs. Health care is simply not a game.

A more compelling argument advanced by the City—and compliant with statutory criterion- is that the majority of public sector collective bargaining agreements in Ohio include employee participation in health insurance premiums. The Summary of Key Findings in the 2016 SERB publication, *The Cost of Health Insurance in Ohio’s Public Sector*, states: “The vast majority of medical plans require employees to contribute a portion of the medical premium cost. For 2016, only 11.6% of single medical plans and 9.4% of family medical premiums were paid 100% by the employer.” (City Exhibit 7, p. 3).

For more than a decade, increasing health care costs have been issues in collective bargaining in Ohio. While other employers were bargaining increased employee contributions to health care coverage, the City was negotiating labor agreements completely covering health insurance premiums for its employees. Now, the City proposes a 10% employee participation in premium costs and a significant increase in the employee deductibles.

The Union does not oppose employee participation in premium costs or an increase in deductibles. Rather, in dispute is how to implement the changes as well as ways in which to mitigate the income loss which unit members will certainly experience as a consequence of these modifications to current contract language. The parties may disagree as to projected increases in health insurance costs and the amount of financial loss to employees due to adjustments in the insurance provisions, but the fundamental concept that the employee should assume a greater participation in the coverage is consistent with public sector labor contracts throughout Ohio.

As these negotiations indicate and as public discourse has recently demonstrated, health insurance is not “easy.” The fact-finder concurs with the Union, though, that a more gradual phasing in of adjustments to past collectively bargained terms is appropriate. To this end the fact-finder recommends a three year labor Agreement in which to implement adjustments to the health care provisions of the Agreement.

Moreover, labor agreements are negotiated in the spirit of compromise, a “give and take.” When one party seeks a justifiable change in contractual language, the other bargains a benefit in exchange. If the parties cannot concur on contractual terms, a neutral will seek to balance, whenever possible, the respective interests of the parties. Given its financial stability, the City cannot expect this bargaining unit to concede a financial perquisite without receiving some benefit in return.

Arguing that this unit is well compensated and that the labor agreement “richly” recognizes the unit for services rendered, the City points out that in terms of total compensation, the bargaining unit ranks second of comparable cities, only behind Strongsville (See City Tab 6). The City contends unit members can well “afford” to pay more for health care (*Id.*).

But, what individual *employees* have the ability to pay for insurance is beyond the purview of the neutral, and certainly not within the scope of statutory criteria or factors traditionally taken into account by fact-finders. The personal finances of the individual employee, including mortgages, tuitions, car loans, are not issues in this review.

Favorable ranking of the unit as a whole in terms of total compensation is the result of contract provisions for which the Union and the City have *collectively* bargained over years in the past. The “rich” compensation received by the unit was an agreement reached by the parties. Any changes to that Agreement must be bargained.

In the current negotiations, the City seeks to have firefighters concede more out of pocket costs for health care. To accomplish its bargaining objective, in return for unit members assuming more costs in health insurance, the City must provide some consideration to the unit. Collective bargaining is a two-way process.

The recommendations which follow incorporate the principles as addressed by the fact-finder in this discussion.

Recommendations

1. Article 7 – Probationary Period – Section 7.01

As argued by the Union the proposed modification is a housekeeping item, intended to bring the language of the Agreement current with practice.. Since the City requires new hires to be certified as paramedics and requires current employees to maintain certification, the language is unnecessary.

Accordingly, the proposal of the Union deleting language pertaining to at-will termination for failure to satisfactorily complete such training is recommended,

2. Article 7 – Promotions

Expressing concerns about the ability to fill positions which may become vacant as well as seeking greater flexibility in managing its staff, the City proposes changes to the promotional language. Lacking in the evidence, though, is any evidence as to problems experienced by reason of this language in the past, and future problems are speculative. The fact-finder notes the section provides for an objective evaluation and a fair appointment process. **Current contract language is recommended.**

3. Article 13 – Holidays and Vacations – Section 13.01

To compensate employees for the additional cost of health insurance, the Union seeks twenty-four (24) additional holiday hours as well as premium pay for holidays worked. In addition to staffing problems, management cites a significant increase in costs generated by the Union proposal.

Management, however, is not required to work on holidays but can spend the day in celebration or commemoration with family and friends. Due to a need for coverage, continuity, and cohesion, this safety service unit must work holidays, foregoing the traditional festivities. Instead of spending time with family, members of the unit spend the day with colleagues.

The Union argues internal comparability, pointing out that OPBA units receive eleven (11) holidays and service workers receive thirteen (13) holidays, including two (2) personal days. Because firefighters work twenty-four hour shifts, the comparison cannot be exact. But, if a holiday is calculated at twelve hours, then, the unit is presently paid for ten (10) holidays, a day less than the law enforcement units and two days less than service workers.

Both parties agree the addition of twenty (24) hours sought by the Union is closely equivalent to a percentage increase in wages. Nonetheless, this additional *management* cost is one of the very few issues presented at fact-finding with which a benefit for the bargain on increased *employee* costs for health insurance may be shaped. Furthermore, the proposal is capable of modification and adjustment.

The premium pay aspect of the Union proposal may be set aside as excessively costly and not justified by any comparable data. Rather than the twenty-four (24) hours sought by the Union, the proposed increase in holiday pay can be modified to twelve (12) additional hours, or 132 hours in

holiday pay. In line with internal comparables, this increase in holiday pay, the equivalent of slightly less than one-half a percentage increase in wages, provides some relief for the additional employee insurance costs to be incurred.

The fact-finder recommends increasing holiday pay to 132 hours. No further modifications to holiday pay provisions are recommended.

4. Article 14- Sick Leave Section 14.16

As a housekeeping item and without any objection by the City, the Fact-finder recommends the proposal of the Union deleting the language “another bargaining unit employee” and replacing it with “any full-time employee of the City” in relation to contributing unused accumulated paid sick leave.

The Fact-finder recommends the proposal of the Union.

5. Article 15- Funeral Leave

The funeral leave adjustment proposed by the Union is not a compounded, on-going expense to the City but is, rather, one of only infrequent use. Looking at internal comparability, the modifications are justified. When the occasion arises to tend to needs occasioned by the death of a family member, as specified in the Agreement, it is entirely appropriate to grant the employee adequate time to address those needs as well as to grieve. The City has recognized this purpose and has not argued against the Union proposal.

Funeral Leave language proposed by the Union is recommend, increasing the one (1) tour for death in the immediate family to two (2) and increasing the two (2) tours granted for death of a spouse or child to three (3 tours).

6. Article 16 – Injury Leave

The City has argued that its proposal is a mechanism for controlling costs but not an attempt to reduce benefits. Yet, there is no evidence of any abuse of sick leave or of any unjustifiable cost to the City by reason of sick leave usage. In the absence of a need for change, the fact-finder recommends current contract language which the parties have negotiated and included in prior Agreements.

Current contract language is recommended.

7. Article 17 - Workweek and Overtime (Section 17.04)

As a means of mitigating additional insurance costs, the Union proposes increasing compensatory time. The fact-finder is of the opinion that there are other financial adjustments, such as the Holiday Pay previously discussed, that may compensate employees for additional insurance costs, and that adjustments in perquisites should be measured and consistent with statutory guidelines. Neither internal nor external comparables warrant the changes sought by the unit in compensatory time.

Current contract language is recommended.

8. Article 17- Workweek and Overtime (Section 17.07)

Again, the City proposes changing language to control costs associated with sick time without evidence of a need for the change. As argued by the Union, the negotiated language has been in many labor agreements without controversy or contentions of abuse. The Union cites a 2007 Fact-finding recommendation on this same proposal by the City (Union Exhibit 31). In that Report, the fact-finder observed the lack of evidence pertaining either to savings to the City or abuse of sick time by

employees. He further noted the language had been included in prior contracts for many years. Concurring, this fact-finder recognizes a need to control costs, but that control can be achieved by other contract changes more consistent with well established criteria.

Current contract language is recommended.

9. Article 20 Premium Pay (Section 20.03)

While the City proposes reducing training hours, the Union advocates for additional training time at an overtime rate. Neither party has justified a need for change in language which is designed to insure firefighters are current and knowledgeable regarding services rendered. Current language is sufficient to satisfy that need.

Current contract language is recommended.

10. Article 23 - Longevity

Longevity Pay is a recognized means of compensating employees for continued service to an employer. There does not appear to be any rationale for removing this well-established benefit from the agreement. The fact-finder notes that in fire units cohesion among employees is an essential component of effective service. Teamwork is crucial. Accordingly, the fact-finder does not recommend creating a two-tiered labor force in which new employees can not achieve a benefit granted to others already in the unit. Additionally, the fact-finder notes the City has referenced an “aging” work force and the need to attract new hires. Benefits, such as longevity, should be fairly consistent with comparable jurisdictions in order to secure the needed personnel for the bargaining unit.

Current contract language is recommended.

11. Article 24 – Salary Schedule

This fact-finding procedure is somewhat unique in that the financial issue is not simply an appropriate increase in the wage rate, but, rather, an appropriate bargain for increased insurance costs to be assumed by the unit. Recommended insurance modifications will result in additional out of pocket costs for employees, and the unit members ought to be fairly compensated for this adjustment. As referenced in the preceding discussion, the objective here is to balance the need of the City for employee participation in the health insurance provisions with the added cost to employees.

While comparable jurisdictions negotiated a 2% wage increase for fire units in 2017, there is no evidence of any other jurisdiction bargaining the significant adjustments sought by the City in these negotiations. Moreover, the fact-finder notes that for 2016, fire units state-wide negotiated a 2.34 % wage increase and cities state-wide negotiated an average wage increase of 2.22% (Union Exhibit 29). In arguing comparability, the City has pointed out that the Cleveland region negotiated an average increase of 2.04%. But, as discussed in the overview, Middleburg Heights is not “typical” of the Cleveland region, and an average using inner ring suburbs does not necessarily reflect an appropriate wage increase for more affluent outlying cities.

The City has argued that subsequent to the 2008 recession, other jurisdictions negotiated freezes and/or other economic concessions while this unit continued to receive wage increases of 2%. Yet, the City bargained those wage increases just as other jurisdictions negotiated freezes. This unit should not now be held accountable for prior bargaining of the City during a recessionary period. Nor should state-wide bargaining patterns of the past dictate the current wage increase for this jurisdiction.

As to the financial stability of the City, the Finance Director forecasts, even factoring in a 2% wage increase, significant cash balances by the end of this contract term. Indeed, revenue by contract year 2019 will exceed expenditures by \$1,046,756.81. By 2019, the fund balances will have grown to \$6,597,828 and by 2021, the Finance Director forecasts the fund balance will be \$9,284,087 or 28.6% of expenditures, a percentage increase of more than 10% from the 2017 forecast ratio. In his Operating Budget, the Finance Director notes non-wage expenditures are down roughly 5.7% (Union Exhibit 8, p. 5).

Given the anticipated savings to the City by reason of the increased participation of bargaining unit members in health insurance costs, the City is able to compensate firefighters for the out of pocket adjustments. Just as gradual changes in health insurance are recommended below, similarly, the fact-finder recommends incremental wage adjustments to coincide with the increased employee costs. These wage increases are intended to correspond with the additional employee costs incurred by reason of the health insurance changes.

Retroactive to January 1, 2017, the fact finder recommends a 2% wage increase for 2017; effective January 1, 2018, a 2.33% wage increase, and effective January 1, 2019 a 2.66% wage increase.

12. Article 26- Insurances

Premium contributions

Increasing employee participation in health insurance is the primary issue in this bargaining impasse- how to implement the increase and how to compensate employees for the additional costs. The Union recognizes that comparable units contribute towards health insurance premiums. Rather than opposing employee participation in the cost of insurance premiums, the Union urges a gradual implementation of a contribution calculated on the basis of a COBRA rate with caps over a three year Agreement.

Data submitted by the parties regarding insurance costs to both employee and employer have been reviewed. Differences in plans throughout the state make it a challenge to generalize about health care costs. Uncertainty regarding federal legislation contributes to the difficulty in assessing potential increases. While dramatic insurance increases experienced state-wide from 2000 to 2006 have tapered off, a maximum 10% increase is projected for the City in 2017. Whether or not that increase materializes, cautious and conservative forecasting is expected of public employers.

Like the City, though, individuals must function within a budget allocating available resources in a responsible manner, planning for future needs, and adjusting to unexpected expenditures. Without dispute, adding a 10% employee contribution will have a significant and unanticipated impact upon the finances of the individual employee. Given the substantial and increasing carryover in the Health Insurance Fund maintained by the City, there is no justification for imposing the 10% employee contribution in a single contract year. A more gradual implementation is both reasonable and consistent with insurance adjustments in public sector bargaining in Ohio.

The fact-finder recommends a 5% employee premium contribution in 2017; a 7.5% employee premium contribution in 2018; and a 10% employee premium contribution in 2019.

Deductibles

In addition to employee contributions to the insurance premiums, the City proposes increasing the employee deductibles. As with the premium contributions, in addition to managing health care costs, intent of the City is to bring its Collective Bargaining Agreements into line with practices statewide.

Similar to premium contributions, however, there is no justification for the immediate and excessive increase in out of pocket expenses for employees. The purposes of the City can be achieved in a more gradual implementation over the three year Agreement as well as with a less dramatic impact on employee costs.

The fact finder recommends increasing deductibles to \$150 for individual plans and \$400 for family plans in 2017; \$200 for individual plans and \$450 for family plans in 2018: \$250 for individual plans and \$500 for family plans in 2019.

Insurance Coverage

The City proposes deleting language which it contends is not consistent with the current insurance coverage provided to employees. The Union has argued that it is not aware of the inconsistencies alleged by the City. Insufficient evidence as to the plan or the coverage was provided so as to enable the fact-finder to render a recommendation on the proposed language. Rather, the fact-finder recommends that the parties mutually review the plan and include contract language that is consistent with plan terms and provisions.

The fact-finder recommends that the parties include language relating to the current coverage and terms provided in the insurance plan.

13. Article 40 – Duration

Recommendations for implementing changes in insurance provisions include graduated levels of employee participation. To correspond with the new employee contributions to health insurance, wage rates increase over a three year term. Accordingly, the fact-finder recommends a three year Collective Bargaining Agreement.

A three year Collective Bargaining Agreement is recommended.

14. To the extent the parties have entered into any tentative agreements, those are incorporated herewith.

Respectfully submitted,

s/s Margaret Nancy Johnson
Fact-finder

Service

The foregoing Report and Recommendations have been served electronically this 6th day of April, 2017 on the IAFF at Lemmerbrock@mllabor.com; the City of Middleburg Heights, Cuyahoga County, Ohio, at jstover@sseg-law.com; and upon SERB at MED@serb.state.oh.us.

s/s Margaret Nancy Johnson

Thu, 04/06/2017 02:47:58 PM SERB