

IN THE MATTER OF CONCILIATION

BETWEEN

THE CITY OF BROADVIEW HEIGHTS

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

SERB CASE # 08-MED-10-1058

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## INTRODUCTION

The bargaining unit is represented by Ohio Patrolmen's Benevolent Association (Hereinafter "Union" or "bargaining unit") and the Employer is the City of Broadview Heights (hereinafter "Employer" or "City"). The bargaining unit is comprised of approximately seven (7) employees who provide vital law enforcement, safety and life saving services to the citizens of Broadview Heights and Seven Hills. The previous contract expired December 31, 2008. The parties held several negotiation sessions prior to fact-finding and were able to resolve a large number of issues. However, a small number of issues remained unresolved, which led to conciliation. After reaching impasse the parties went to fact finding and a report was issued by the fact finder September 28, 2009. It was rejected by the Union, which led to the instant conciliation.

A mediation/conciliation hearing was held on December 21, 2009 over the issues addressed in this report. Prior to a formal submission of evidence, the conciliator made a concentrated effort to reconcile the differences between the parties over the unresolved issues addressed in this report. Settlement possibilities were carefully explored with the parties in an effort to find common ground upon which to construct a settlement. While the discussion were particularly helpful to the conciliator in understanding the unique concerns of each party, a complete and formal tentative agreement was not reached, which led to the issuance

of this award. The mediation effort was then followed by a hearing/submission of evidence on the issues. Both advocates represented their respective parties well and clearly articulated the position of their clients on the issues in dispute. The Employer's and the Union's position statements, along with verbatim arguments, are summarized in this report.

### **OVERALL RATIONALE FOR RECOMMENDATIONS**

Since September of 2008 the current state of the national and state economy has almost become a daily topic of conversation. At the national level there are cautiously optimistic signs that consumer confidence is returning, albeit slowly. Apart from the national economy Ohio's economy remains uncertain at best with a backdrop of serious financial concerns at the state level. For several months Governor Strickland has reiterated the considerable magnitude of Ohio's revenue shortfall both in the current and next biennium budgets, and the necessity of having to take decisive action to reduce costs in order to balance the state's budget. In December an 850 million dollar shortfall in the budget, that was the subject of divisive debate, was resolved with the canceling of tax cuts previously granted by the Ohio legislature. Additionally, Ohio's budget was balanced with a considerable infusion of federal stimulus money, money that may be absent in the next biennium budget. In 2009 negotiations with the state of Ohio and all of its unions, including OCSEA

and SEIU, resulted in numerous monetary concessions, including wage freezes, step freezes, and unpaid furloughs. However, the overall extent to which these serious financial conditions at the state or even large city level in Ohio, impact the City of Broadview Heights can only be discerned by a local focus. Various public sector entities in the state are faring differently. All parties, employees and employers alike, are concerned about their bottom lines. On the other hand, one must be careful in generalizing the likelihood of "economic crisis" for every employer without carefully examining the facts. It is unreasonable to generalize that all public employers are being impacted equally. While some public employers, as a result of a combination of economic factors, are being forced to make serious reductions in services and in costs, a combination of prudence and good fortune has placed more economically stable public entities "on higher ground." They are in the fortunate position to be able to take more measured steps over time in order to weather the current economic storm. Furthermore, it is axiomatic that the delivery of quality service depends on recruiting and retaining quality employees, which includes bargaining unit, non-bargaining unit, and managerial employees. Central to maintaining a quality and experienced workforce is the maintenance of a competitive and equitable wage structure that provides a fair wage for knowledge, skills, and ability, along with quality benefits, and a reasonable working environment even in trying times.

## CRITERIA

### OHIO REVISED CODE 4117

In the finding of fact, the Ohio Revised Code, Section 4117.14 (G) (7) establishes the criteria to be considered for conciliators. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any, between the parties;
2. Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests 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. The stipulations of the parties;
6. Such factors not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, conciliation, or other impasse resolution procedures in the public service or in private employment.

These criteria provide the basis upon which the following recommendations are made; These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

#### Employer's Position

- The City proposes current wages to remain in effect for 2009, 2010 and until October 1, 2011, at which time they will be increased by 6%. The City also proposes to maintain the current professional bonuses.
- The City proposes to increase the designated days for additional pay to include Christmas Eve and New Year's Eve. While not increasing the number of paid holidays, this will allow the City to close the facilities on Christmas Eve and New Year's Eve – which will lead to cost savings – while rewarding those who must work those days in any event.
- The City proposes a three-year agreement commencing January 1, 2009 and expiring December 31, 2011. This includes the possibility of a re-opener on health care only for 2010 and 2011, under a new section of Article 31, to read:

Maintain current language on Article 31.1 through 31.5 and add:

31.06 Notwithstanding the foregoing, the parties agree that either may reopen negotiations regarding this Article pursuant to the impasse provisions of Rev. Code § 4117.14 for the years 2010 and/or 2011"

In its position statement the Employer made the following arguments in support of its position:

The City proposal merely reflects the financial reality of its finances. As the fact-finder correctly opined:

There is little doubt as to the acuteness of the City's present financial circumstances. Income taxes, representing some 60% of City's revenues, have declined significantly. Documents submitted by the Employer indicate RITA income tax collections on behalf of Broadview Heights as of August of 2009 were some \$285,608.52 less than the same date last year. In addition, the City's real estate property tax base is



undergoing a 7% devaluation under the County Auditor's initiative. City officials and non-represented employees have received no wage increases, and some have declined or repaid increases mandated under the City's Charter. Those bargaining units that did receive modest wage enhancements did so for one year only, with renegotiation to take place at the end of the current year, or deferred increases until the last quarter of a three-year agreement. The Factfinder also notes that the City has assumed increases in health insurance coverage amounting to some 7.6%.

Unfortunately, the dire picture accurately described by the fact-finder has only worsened since his report was generated. For example, instead of income tax collections being \$285,000 less than last year, the final 2009 figures show collections off \$422,000 – representing about a 4% reduction in overall revenues. (See Tab K.) Instead of a 7% decline in property valuations, the County Auditor has revised his figures and has now projected values to be down 12% to 13% from 2009. (See Tab M.) This will result in a \$552,000 revenue loss – representing in and of itself more than a 5% decrease in overall revenues. Even if income tax collections for 2009 remained at 2008 levels, the City will have about 10% less funds for the coming year – a hurdle that would challenge any community.

As evident from the City's financial documents, revenues have declined significantly in the final years of the Dispatchers' contract. For example, at year end 2008, the General Fund revenues were down over \$300,000 from 2007 and barely at 2005 levels. (See Tab F.) While 2009 has been a trying time, it has been especially bad recently and projects to be alarmingly worse in 2010. The City's month ending balance sheets showed cause for some concern during the first few months of 2009 when the unencumbered balance in the General Fund dipped from \$1,100,000 in February to \$690,000 in April. (See Tab H.) This caused the City to undergo significant and painful cost cutting measures. Budgets were revised and Directors ordered to cut expenses for the remainder of 2009. The cost-cutting program worked as the City has spent about \$800,000 less from the General Fund than it did at this time last year. (See Tabs N and O representing the November expense reports for 2009 and 2008 respectively. Page 13 on each exhibit shows GF expenses at \$10,525,000 for month end November 2008 and \$9,725,000 for November 2009.) This is a significant achievement demonstrating capable and prudent management and is all the more remarkable given the steadily rising costs experienced by the City for fuel, utilities, refuse service etc.

While cost cutting helped somewhat to stabilize the General Fund, unfortunately, the City's finances did not take a turn for the better following the spring of 2009 as hoped. Consequently, in addition to continuing its massive cost cutting efforts, the City has been forced to

reallocate \$486,000 to the General Fund from the Safety Equipment, Service Equipment and Road Funds. (See Tab Q.) These two efforts are the *only reasons* why the month end balance sheets have remained at levels near prior years. (See Tab H, showing decline in unencumbered balance through beginning months with some stabilization recently.) That however will not continue with the anticipated revenue shortfalls in 2010.

Given the overall financial decline experienced over the last year or so as well as the even more unexpected serious and precipitous financial downturn recently, the City's finance director's ability to certify any increase in wages at this time is doubtful.

The City's position is based upon its continually and significantly worsening financial position. OAC §4117-9-06(H) (3) sets forth one of the factors for a conciliator to take into consideration in making a recommendation. This provision states:

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.

The City does not have the finances to pay for the union's requested wage and benefits increase without significant reductions. Moreover, any increases awarded to the Union likely will form the basis of claims from the many other units that are currently bargaining with the City. While the City certainly hopes that its City's finances will improve, clearly that will not occur before 2011 – the earliest time it can consider wage increases. The City's offer for a wage increase beginning October 1, 2011 is in line with the facts as determined by Fact-finder Van Pelt and, while a risk to the City, far less risk than committing to wage increases now and then being forced to lay off personnel because of the additional costs.

Another factor considered by conciliators is recent wage modifications, if any, with a City's other bargaining units and with its non-represented employees. In this case, the City has imposed wage freezes on all non-represented employees, including the City's non-elected Administration. While the City concluded collective bargaining agreements earlier this year with the Fire Fighters and Police, resulting in a wage freeze through June 30, 2009, and then a 2% increase until December 31, 2009, there are three (3) significant factors which make an otherwise simple "pattern" contract argument problematical for the Dispatchers.<sup>1</sup>

The first is that the Fire negotiations were concluded **well before** the most recent and significant financial downturn, and the stringent cost-cutting

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<sup>1</sup> While the Fire Fighter contract was for two years, there was a provision to reopen wages and benefits for 2010. Due to its financial difficulties, the City has elected to reopen those negotiations which are currently ongoing.



measures implemented by the City in its attempt to maintain financial viability. Secondly, as to the Fire Department, the City has a separate levy that is dedicated to fire salaries and which while in precarious condition itself, is an additional funding source not available to any other unit. Finally, as the conciliator knows, parity of pay and benefits between firefighters and police officers was an **extremely** important factor with both groups in both these and many previous negotiations. This conciliator, in his report governing the previous Fire negotiations, outlined both the history and expectation of parity anticipated with this negotiation session. Based on this history – as well as the fact the Police and Fire agreements are essentially limited to one year – it was only with great reluctance that the Police fact-finder found the principle of parity of police and fire wages such an important factor as to override a financial situation that would otherwise not justify a wage increase.

### Union's Position

• Effective	<b>January 1, 2009</b>	<b>October 1, 2011</b>
	(maintain current wages)	
	<u>Hourly Rate</u>	<u>Hourly Rate</u>
• 0-12 months	\$15.11	16.02
• 12-24 months	\$15.90	16.85
• 24-36 months	\$18.56	19.67
• 36 months & above	\$ 20.60	21.84

- In addition, the union requests two (2) holidays to be added to the list of premium holidays starting Christmas day of 2009. Thereafter, Christmas Eve and New Years Eve shall be Holidays and employees shall earn premium pay for all hours worked on those days.

In its position statement the Union made the following arguments in support of its position:

The OPBA is requesting a wage increase of two percent (2%) across the board for the Dispatch bargaining unit effective July 1, 2009. The Union is aware that we are requesting a wage increase during a time when many employees are not receiving wage increases and some have been laid-off from

their jobs. However, very few Cities in Cuyahoga County have forgone a pay raise thus far this year.

Furthermore, Broadview Hts. is improving financially. We realize the economic difficulties many jurisdictions are experiencing. However, on a national level, the trouble seems to have bottomed out. The economic leaders are now predicting growth in most sectors, and have been for a few months. Indeed the sale of homes has increased during the last few months, and so has the price they are selling for.

Internally, the Conciliator has, as a Fact-finder, awarded the Police and Sergeants a two percent (2%) wage increase effective July 1, 2009. The City did not reject said recommendation, which was their right. The same pattern was agreed to with the Firemen. The contracts are set to expire at the end of the year.

However, the Corrections Officers and the City came to different terms. They agreed to maintain the present wage rate for 2009 and 2010. However, they increased the professional pay by three hundred dollars (\$300) for 2009 and by an additional three hundred dollars (\$300) for 2010. In addition, their pay increase for 2010 is six percent (6%).

The wage increase was determined by the average of several communities. The City estimated the increase in earnings for the Corrections Officers at between six and seven percent (6-7%) over the life of the contract. The City stated they felt the Correction Officers were a bit behind and needed to make up the difference.

The Comparables will show the dispatch unit is behind the comparable jurisdictions in the area as well. They have been so for a number of years.

During negotiations, the parties agreed upon the jurisdictions that should be used as comparables. They are listed in our wage comparisons. The Union is under the impression that the City changed their path only after they realized just how far underpaid the dispatchers are.

There is another unique facet to the Dispatchers when compared to the other bargaining units within Broadview Hts. The Dispatchers perform the dispatch function for the City of Seven Hills. In doing so, the coverage almost doubles due to the size of the jurisdiction and the additional employees involved.

The City of Broadview Hts. charges the City of Seven Hills for the dispatch services provided. The cost is minimal to Seven Hills, compared to the cost of dispatching let alone the cost of the hardware involved.

The money flows straight to the general fund. The Union believes the money should be used to directly benefit the dispatchers, who are the only employees earning the funds. It should be noted the contract for the funds has been recently renewed, and are set for the duration of the contract.

### **Discussion**

Through mediation efforts the parties moved much closer to each other's positions, but fell short of a complete tentative agreement. In reviewing the facts and arguments of both parties and in applying the statutory criteria, there is greater support for the Employer's position in this matter. I concur with the fact finder that the City's financial position has been seriously impacted by a decline in income due to a shortfall in tax revenue. The Union's revised wage proposal (6% effective October 1, 2011) and holiday proposal (two additional premium holidays) is very similar if not identical in the main to the Employer's revised position on these two issues. The Union did not indicate any opposition to the re-opener language on health care and both parties are seeking a three (3) year agreement.

### **Determination:**

**The Employer's position on Wages, Holidays, and Duration/Health Care Re-opener is awarded.**

## TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues, copies of which they have retained. These tentative agreements, on all or portions of articles, and any language recommended to change and/or remain current are all part of the recommendations contained in this report. Any issues, or sub-issues not specifically addressed are also intended to remain current language for purposes of this report.

The Fact-finder respectfully submits the above recommendations to the parties this 30<sup>th</sup> day of December 2009 in Portage County, Ohio.



Robert G. Stein, Fact-finder