Received Electronically @ SERB Dec 21, 2011 8:59am

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Conciliation Between:

Ohio Patrolmen's Benevolent Association	:	Case No. 11-MED-04-0698
and	:	AWARD
City and Miamisburg	:	Margaret Nancy Johnson Conciliator

Statement of the Case

This matter came on for hearing on December 12, 2011, in a conference room at the Mound Advanced Technology Center, in Miamisburg, Ohio, pursuant to statutory proceedings for resolution of a public sector collective bargaining impasse as set forth in Ohio Revised Code Section 4117.14(D). Following the rejection of the Report and Recommendations of a Fact-finder as issued on September 30, 2011, the State Employment Relations Board, hereinafter "SERB," appointed Margaret Nancy Johnson to serve as Conciliator selecting issue by issue between the final offer proposals of the two parties. The City of Miamisburg, hereinafter "City" or "Employer," was represented by Donald L. Crain, attorney with the law firm of Frost, Brown, Todd. Joseph M. Hegedus, Attorney at Law, represented the Ohio Patrolmen's Benevolent Association, hereinafter "OPBA," or "Union." Both parties had the opportunity to present testimony and documentary evidence supportive of their respective positions. The parties stipulated that documents submitted into evidence properly constitute the entire record of these proceedings.

Approximately twenty-eight (28) full time Police Officers comprise the law enforcement bargaining unit now under consideration, engaging in general police services for the City. The unit includes all full-time, non-probationary police officers, excluding sergeants and officers of higher rank as well as supervisory personnel. The current three year Collective Bargaining Agreement between the parties expires on June 30, 2013. Terms of the current contract provide a re-opener for both Wages and Insurance for the final two years of the Agreement, issues presented to the fact-finder for his consideration and recommendation.

While the Union rejected the Report, the City accepted the recommendations of the fact-finder and argues for their implementation at conciliation. As the parties concur on retaining current contract language for insurance as recommended by the fact-finder, the sole issue before the conciliator is wages for 2001-2012 and 2012-2013.

Issues

The issue in contention is Article 10, Wages.

Criteria

In rendering the award which follows, the Conciliator has taken into consideration the following statutory criteria:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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 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; and
6. Such other facts, not confined to those listed, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Position of the Parties

The Union

As this unit has not received a wage increase since July, 2009, the minimal percentage increase sought by the Union in these proceedings is justified. Recommendations made by the Fact-finder in his Report and Recommendations are at variance with factual statements set forth therein. For example, while finding that “there are more than sufficient funds to pay for a minimal cost of living pay increase,” the fact-finder declined to make any adjustment but continued the wage freeze in place since 2010 (Report, p.10)

Additionally, the fact-finder recognized the significance of a cost of living increase for the unit, acknowledging that “food price increases were 4.2%, energy was 19%, gasoline was 33.3% medical care commodities was 3.2%, transportation services were 2.9% and medical care services were 3.2%” (Report, p. 10). The fact-finder commented that “these increases should not be ignored or overlooked” and that increases in products and services while wages and benefits remain stagnant, “means a lower standard of living for all of these workers” (id.) In spite of his recognition of the need for a wage adjustment, the fact-finder failed to grant this unit any increase. Since his reasoning is so flawed, the Union has rejected his recommendations and has proceeded to conciliation to rectify the errors made in the prior proceeding.

A Bureau of Labor Statistics News Release issued subsequent to the fact-finding report states that “over the last 12 months, the all items index increased 3.5 percent” (Union Exhibit 17). The same report states that the Consumer Price Index for Urban Wage Earners increased 3.9 percent over the last 12 months. Clearly, the wages paid to this unit are not keeping up with the cost of living increases these employees are experiencing.

As articulated in prior conciliation awards, the conciliator herein is not obligated to follow the fact-finder's recommendations, especially when his reasoning is so inconsistent with his recommendations. Rather, the conciliator must adhere to the statutory criteria in rendering an award. The criteria as set forth in the statute support the increases sought by the Union.

One such criterion is comparability with similar units. External comparables, as demonstrated by the Union, indicate that this unit is paid considerably less than police units in comparable communities. In its comparability chart, the Union demonstrates that the City lags neighboring cities in terms of wages and total compensation. While the average salary for ten year employees is $67,219.59, City employees in that rank are paid $63,312.50, or 94.19% of the average. When uniform pay, shift differentials, longevity and other benefits are calculated, then the average compensation is $68,360.84. The total compensation paid by the City to ten year patrol officers is $65,062.59, or 95.16% of the average.

A review of the same external comparables also demonstrates that in 2011, police officers averaged an increase of 2.39% in wages. According to SERB data (Union Exhibit 18), in 2010, police units received increases averaging 1.39% and public sector employees in the Dayton regions received 1.23%. The Union offer is entirely consistent with these modest increases. Failure of the fact-finder to provide some relief for the unit has the consequence of expanding the gap between the salaries paid to this unit and those received by officers in neighboring jurisdictions.

In the same year in which the union experienced a wage freeze, the Fire-fighters for the City experienced a 3% wage increase. This internal inconsistency must be corrected. Allegations of inability to pay loses credibility when on August 1, 2011, the City is able to pay its Chief of Police the sum of $8,000 (Union Exhibit 13) or the merit increases identified in Union Exhibit 14. In comparison, the 1% the Union seeks effective January 2012 and the 1.5% effective January 2013 are modest increases which the City can well afford.

As stated by the fact-finder, the City has the ability to pay the minimal increases sought in this proceeding. Indeed, including roll-ups the cost of the increase proposed by the Union is less than the cost of the lump sum proposed by the City (See Tab 41). It is indisputable that the City has the ability to pay the proposed increase.

Also new evidence since the fact-finding hearing includes the most recent figures on income tax receipts (Union Exhibit 22). Year to date receipts total $12,731, 071.09 and these exceed the expectation of the City. Through the reported eleven months of 2011, tax collection surpassed the entire 2010 collection. The increase of the tax from 1.75% to 2.25% clearly generates sufficient income to pay Police Officers a minimal wage increase.

To further demonstrate the ability of the City to pay the increase sought by the Union, the Comprehensive Annual Financial Report ("CAFR") for the year ending 2010 (Union Exhibit 1) has been submitted into evidence. This document prepared by the City Department of Finance and including audited financial statements shows the City's finances are improving and the City is not in fiscal distress. The financial information set forth in the report is far more compelling that the opinions expressed by the Teamsters in a document upon which the City seeks to rely. On page ix of the Report, the City states that "General Fund Revenues have increased from $7.8 million in 1991 to 14.9 million in 2010, an average annual rate of 4.8%." An unbudgeted 2.9% increase in income tax revenues for 2010 helped erase a "projected $1 million budget deficit for the year" (CAFR, p. x).

In addition to the income tax increase, the City is pursuing economic development that will generate additional revenues. A major commercial construction project near the Austin Center interchange on Interstate 75 is expected to bring in between $150,000 and $175,000 in new income tax revenue in the second half of 2011 (CAFR, pp. xi-xii). Another project of the City is a five year plan by which water and sewer rate increases will be phased-in.

Economic stability of the City is recognized by Moody Investor's Service which affirmed the City's Aa2 GOLT rating. The rating agency concluded that the "affirmation of the City's Aa2 long term rating reflects the modestly-sized tax base that benefits from continued diversification of the local employment base; sound financial position that is expected to continue despite planned draws upon reserves in fiscal 2009 and fiscal 2010; and manageable debt profile" (Union Exhibit 7). The June 17, 2010 memo references the Fire levy and income from a Municipal Trust Fund, interest from which can be made available for expenditures, thereby providing a "cushion" and "financial flexibility." As defined by Moody's, "Bonds rated Aa are judged to be of high quality by all standards" (Union Exhibit 9). On August 3, 2011 the City's Special Obligation Revenue Notes received a MIG 1 rating, Moody's highest rating category for short term obligations.

With 16% of its annual operating expenditure in the General Fund balance, the City has sufficient carry-over over to meet its obligations, certainly much more than many cities within the State and more than is generally recognized as prudent (See Union Exhibit 11). Evidence on the financial status of the City overwhelmingly establishes an ability to pay the increases sought by the Union. The Union seeks a 1% increase effective January 1, 2012 and a 1.5% increase effective January 1, 2013.

The City

The City argues for retention of the recommendations of the fact-finder whose analysis was complete and accurate. Having spent extensive time with the parties, the Fact-finder thoroughly understood the issues before him and issued recommendations which are both fair and compliant with statutory requirements. As a well-established concept in impasse proceedings, deference to the fact-finder is appropriate in the absence of error, new evidence, or changed circumstances.

Although the City endeavors to be consistent with all employees, the wage freeze with the lump sum payment offered this unit actually grants the unit a benefit not given to other employees. Payment of $1,000 as recommended by the fact-finder is the equivalent of a 1.63% increase. Because of its acceptance of the recommendations, the City is willing to deviate from its principle of internal comparability in this regard. Moreover, should another employee group receive a cost of living payment or wage increase, the "me-too" language offered by the City ensures the unit will receive the same.

Examination of comparable cities in the area also supports the position of the City which is well within the mainstream in terms of wages and benefits. In this recessionary period, public employers have been required to contain expenditures. Multi-year wage freezes have been initiated by some of the jurisdictions considered as comparable communities. These external comparisons support the wage freeze and lump sum payment offered by the City.

A consideration of the Consumer Price Index as well as the SERB Annual Wage Settlement Report indicates that the City police have received very reasonable wage increases in the past. This unit has kept current with inflationary trends and with wage increases within the state.

While the finances are improving and the electorate has responded to financial needs with approval of an income tax increase, the City continues to face significant fiscal challenges in the near future. From 2007 to 2009, general revenue fund reserves were depleted by $2,021,305. Due to actions by the State, the City will lose some significant revenues upon which it has relied in the past. These include reductions in local government funding, the elimination of the estate tax, and the phasing out of the tangible personal property tax and commercial activities tax reimbursement.

In addition to confronting these revenue losses, the City must address its structural deficit and the decline in its General Fund. Without a solution to this problem, the City will continue to expend in excess of its revenues, a practice which must be remedied. In the past, in order to to balance its budget, the City has engaged in short-term stop-gap measures, diverting revenues from other funds to the General Fund and transferring General Fund expenses to other funds. This practice cannot continue as it hinders much needed capital improvements.

Improved finances as cited by the Union are attributable to extreme measures initiated by the City, including personnel reductions. The Public Safety Dispatch operation has been eliminated and transferred to the Montgomery County Regional Dispatch Center. The Fire Department is in the process of consolidation with Miami Township for a joint fire district. Vacancies remain unfilled.

The City has sought the participation of all employees in the cost savings measures. The wage offer of the City to this bargaining unit is consistent with its financial ability as recognized by the fact-finder, and it ought to be awarded by the conciliator in this proceeding. No other employee group or bargaining unit has received the increases now proposed by the Union.

For the final two years of the Agreement, the City offers a wage freeze with a lump sum payment of $1,000 not added to the wage rate in the first pay period following 7/1/2012, less lawful deductions. In addition, the City offers: "If any other group of employees (i.e. administration, management, non-bargaining unit employees, or other organized unit members) receives a cost of living increase, or an across- the- board pay increase, the same increase shall be paid to bargaining members under this Agreement for the same period of time."

Discussion

This matter comes before the Conciliator as a re-opener on wages for the final two years of the current Collective Bargaining Agreement between the parties. Extensive documentation has been submitted by both the City and the Union in arguing their respective positions. In issuing this award, the conciliator has carefully reviewed all of these exhibits, and she has considered the applicability of statutory criteria to the financial evidence and arguments raised by the parties. Additionally, the conciliator has evaluated the Report and Recommendations of the fact-finder and its function in these conciliation proceedings. The discussion which follows is an explanation of the award issued in this matter.

General Geographic and Commercial Characteristics

The City is located within Montgomery County in the southwestern area of the State. With a population in excess of 20,000, the City has experienced a population growth "even as Montgomery County's overall population decreased during the decade" (See Union Exhibit 1). As a consequence of the City's concentrated efforts to attract light industrial, retail and service sector employers, "new jobs have been created in the City" and "growth and development in Miamisburg outside the Mound facility has more than offset job losses within the facility" (See Union Exhibit 1).

The referenced Mound facility is a decommissioned former federal Department of Energy site which the City acquired and is in the process of converting to commercial use as a light industrial and technology business park. Currently there are approximately fifteen (15) private businesses in the compound. In addition to development of the Mound facility, the City is pursuing other commercial activities, such as construction of the Byers Business Park near the Austin Center interchange on Interstate 75.

A major employer in the City is the Kettering Health Network which is in the middle of a ten year master plan to expand health care services. Other major employers include Avery Dennison, Evenflo, Dayton Light and Power, and Dayton Superior (See Fact-Finder Report and Recommendations, Union Exhibits 1 and 7).

The Issue under Consideration

The Report and Recommendations of the fact-finder considered two issues as argued by the parties: wages and health insurance. In these proceedings, the City argues complete acceptance of the report of the fact-finder. While the Union challenges his decision on wages, the OPBA accepts the recommendation of the fact-finder on health insurance. Thus, health insurance is not an issue in contention in these proceedings and the conciliator is not to award contractual language on that subject. Even so, this conciliator is of the opinion that any review of the fact-finder's report must consider his recommendations on health insurance, and any award in this matter must take into account the health insurance provisions of this Agreement.

In making his recommendations, the fact-finder balanced those two issues before him. An acceptance of one of his recommendations and a rejection of the other negates the compromise fashioned by the fact-finder. Certainly, a different balance could have been achieved, granting the OPBA some wage increase off-set by additional employee cost in insurance. But that was not the compromise fashioned by the fact-finder after days of working extensively with the parties in mediation and listening to the parties' respective concerns.

Health insurance is a rising cost to both employees and employers. As a contractual matter, insurance and wages are the primary economic issues addressed in negotiation, though other financial issues certainly are relevant. Even though only one issue is before her, the Report of the Fact-finder must be viewed in its entirety. A meaningful analysis of wages cannot be made without reference to and consideration of the health insurance language currently in the contract, retention of which was recommended by the fact-finder. Moreover when considering the statutory criterion of comparability, as discussed hereinafter, wages and insurance go hand-in-hand.

Deference to the Fact-finding Report

In arguing their respective positions, both parties address the deference to be afforded to the recommendations of the fact-finder, citing numerous conciliation awards in which the issue is analyzed. Indeed, much has been written on the subject; but the extent to which a conciliator feels compelled to adhere to the recommendations of the fact-finder will depend upon the totality of facts presented to the conciliator *and scrutiny of the statutory criteria.* In fact, deviation from the recommendations of a fact-finder is not limited to instances of error or flawed data, but may occur for numerous reasons, including an inability on the part of the conciliator to discern the factual or statutory basis upon which recommendations have been made.

When multiple issues are in review, some variation from the recommendations of the fact-finder may be justified, readjusting the "balance" previously noted. Subsequent to the issuance of a report, the parties themselves may have modified the bargaining landscape by drawing upon the recommendations and settling issues analyzed at fact-finding. In those cases, even while the conciliator advocates for deference, modifications can be made consistent with statutory criteria. In the opinion of this conciliator, the Report of the Fact-finder is one of those criteria traditionally relied upon in resolving impasse proceedings, but it should not be deemed determinative. Nor should it be the exclusive rationale.

In the instance now pending two issues were addressed by the fact-finder, only one of which is now before the conciliator. The City asserts that to deviate from the recommendations of a fact-finder, a conciliator should find that either new evidence requires a different conclusion or that data relied upon by the fact-finder was flawed. On the question of error, the Union suggests that the fact-finder erred in that his conclusion on wages is not consistent with his findings on either ability to pay or on cost of living increases identified in the Consumer Price Index ("CPI").

Pointing out that its offer for a wage increase is below the most recent cost of living increases, the Union cites references by the fact-finder both to the importance of the CPI to the individual employee and also to the City's General Fund balances. For example, on page 10 of his Report, the fact-finder writes "the City's high percentage of ending fund balances shows that there are more than sufficient funds to pay for minimal cost of living pay increases;" and further on the same page, he states cost of living increases "should not be ignored or overlooked. Increased payments for these products and services, while wages and benefits remain stagnant, or increase only moderately, means a lower standard of living for all of these workers."

Responding to that particular contention of the Union, the City argues that though not incorporated into the base pay, the unit has received increases in this three year contract: a negotiated lump sum payment of $1,000 in 2010 and the recommended $1,000 lump sum payment in the first pay period following July 1, 2012. The City indicates that a lump sum payment of $1,000, though not rolled into the wage, is the equivalent of a 1.63% increase, thereby satisfying the fact-finder's observation concerning sufficient funds to pay minimal cost of living increases.

The Conciliator finds the observations of the City persuasive in this instance. It simply is not accurate to assert the absence of *any* economic gain for the members of the bargaining unit, citing only the wage freeze implemented in the initial year of the contract and recommended for the duration of the agreement. Although it may not build upon a pension, payments totaling $2,000 within a three year contract is money in the pocket (or bank) of the employee and not to be marginalized. Moreover, the employees still receive step increases.

Certainly, the unit would have preferred an increase to the base rate, but in less than ideal economic times, a lump sum payment is an appropriate alternative, having significant monetary value. Moreover, while the CPI is an important analytical tool, the wages paid to this unit have never been tied to increases in the index and have frequently surpassed percentages set forth therein. Indeed, the frequently cited CPI is a guide rather than a compelling factor in contract negotiations.

In his report, the fact-finder clearly identified the statutory criteria upon which his recommendations were based including comparables, both external and internal, and the financial status of the City. While updated data was submitted, no changed circumstances were presented to the conciliator. Indeed, the evidence as argued by the parties to the conciliator is essentially the same as presented at fact-finding. Absent error or a changed bargaining landscape and given the clarity of the Report and Recommendations based upon evidence presented, the conciliator finds that, in this case, the recommendations of the fact-finder warrant consideration as *one* of those factors traditionally relied upon by a Conciliator, and she next analyzes other specific statutory criteria upon which her award is based.

Ability to Pay

Both parties introduced extensive documentation on the issue of financial ability. The Union has pointed out that the increase sought by the Union the first year of the re-opener will cost the City less than its offered lump sum payment even when the roll-ups are calculated. Although the initial cost to the City may be less, the prospective costs do build up. Long term consequences rather than short term costs must be considered when negotiating contractual wages. When recommending the lump sum payment rather than a percentage wage increase, the fact-finder was mindful of long term costs over “the next several years,” of recovery and opined for a “conservative approach relative to budgetary management” (Fact-finder's Report, p. 8).

Arguing that the City's financial position “is better than most public employers,” the Union cites improved “revenue streams,” including the recently implemented income tax increase, revenue from which exceeded expectations (Union Opening Statement). It is important to note, however, that the tax was initiated to address disparity between revenue and expenditures and not to expand the municipal budget, to maintain service levels, to enable the City to proceed with necessary capital improvements which had been put on hold, to continue operating recreational facilities, and to contain the City's diminishing reserves. Moreover, the financial strength of the City cannot be viewed in a vacuum, but must take into account the cost-savings measures and reductions implemented by the City, more fully addressed below.

In support of its contention on ability of the City to pay the increases it seeks in this proceeding, the Union has relied upon the Comprehensive Annual Financial Report (CAFR) prepared by the City for the year ending December 31, 2010 (See Union Exhibit 1). Findings in the Report indicate that the finances of the City are stable and growing. Examples include “an unbudgeted 2.9% increase in income tax revenue in 2010” which “helped strengthen the City's fiscal position and erase a projected $1 million budget deficit” (CAFR, p. x).

Although the City is dismissive of the CAFR arguing focus upon total assets compared to liabilities is misleading, the Report, as the title indicates, includes a *comprehensiv*e financial review as reported by the City and audited by an independent auditing firm. Even so, like all financial reports, the 137 page document requires an entire reading rather than a selective perusal. Caveats as well as compliments must be noted, and in determining issues of employee wages, assets compared with liabilities are less persuasive than revenues compared with expenditures.

Accordingly, it is important to note in the Report not just the increase in General Fund ending balances for 2010, but to read that in addition to improved revenues, the increase is attributed to “the efforts of management to *control costs*” (CAFR p. 3) and that the City engaged in “conservative spending" (p. 10). Additionally, increases in the Capital Improvement Fund are attributable to "the City delaying some of their capital expenditures" (p.3). Moreover, the income tax receipts have been applied not just to wages, but to offset "the deficiency in program revenues" (p. 9). As stated on page 41 of the Report, "income tax proceeds are to be used to pay the cost of administering the tax, general fund operations, maintenance of equipment, new equipment, capital improvements, debt service and other governmental functions when needed as determined by City Council." Finally, the Report indicates that the "City continues to maintain a fairly healthy General Fund balance in an attempt to provide stability in years in which revenues can not support spending levels" (p. 10). Indeed, the "City's ending fund balance is far greater than other Ohio municipalities, many of which are at 10% or below" (Fact-finders Report, p. 9).

In the past, public employers and neutrals in impasse proceedings were willing to use general fund reserves to pay for wage increases. Events of the past several years have demonstrated a need to revise such tendencies and, instead, to bring expenditures into line with revenues. Evidence establishes that the City has been coping with expenditures exceeding revenues for some time, but the financial crisis starting in the fall of 2008 has compelled the City to address its "structural deficit." Testimony on the financial challenges and responses of the City has been provided by its Finance Director.

Immediate action of the City included significant cuts to its spending. The City eliminated its public safety dispatch operation and has joined Montgomery County's Regional Dispatch Center. Fire services for the City have been consolidated with the fire services of Miami Township in a joint fire district. Vacancies in full time staff have not been filled. While full-time staff in 2008 included 188 employees, in 2011 the figure is 165 full time staff (See City Exhibit 44).

In pursuit of long-term fiscal sustainability, the City is implementing a Five Year Financial plan premised upon an annual balance between expenses and revenues. On revenue strategies, some of the elements of the plan have already been initiated. For example, with voter approval, the City was able to increase its income tax rate from 1.75% to 2.25% beginning January 2011. Other strategic revenue elements of the plan are on-going, such as development programming, like the Austin interchange project. Some elements remain to be accomplished, such as investment in the infrastructure needs of the City.

Of critical importance in this proceeding are expense strategies included in the financial plan. In order to maintain or improve its bond rating so as reduce costs of debt and to insure access to the debt market, the City is committed to eliminating its structural deficit whereby its expenditures exceed its receipts, and to restore a general fund reserve of 25%. In comparing General Fund Revenues and Expenditures, the Finance Director explained that had it not been for the "accounting tactics" or "balancing acts" of the City, the disparity between revenues and expenditures would have been significantly greater. Even with the transfers of expenditures and receipts between funds, in 2009 the City's reserve funds were diminished by 1.13 million. In that year receipts totaled $14,777,143 and expenses totaled $15,908,495 (See City Exhibit 28). In 2010, revenues were $14,369,882 and expenditures were $15,828,777. Only with fund transfers were 2010 revenues sufficient for expenditures. With expenditures exceeding revenues, the City determined its depletion of General Fund reserves was not sustainable. Part of the Five Year Plan is to restore the general fund reserve to 25% of expenditures.

Use of General Fund reserves by public employers to pay for on-going expenses does occur and many public employers in the state have less in reserve than the City. Nonetheless, the significance of having a sufficient reserve has become increasingly apparent. In Ohio local entities are now faced with revenue shortfalls as the State has enacted cost-savings measures directly affecting local governments. These include the reduction in funding for local governments, the elimination of the estate tax, and the phasing out of the personal property tax and commercial activities tax. General reserve funds are essential to meet such budgetary pressures and loss of income.

Strength in General Fund ending balances is important, too, for bond rating. These ratings are significant as the ratings have a direct impact on the ability of the City to borrow and upon the interest rates to be paid for loans. The relevance of bond ratings is increasingly apparent-- locally, nationally, and globally.

While the Union has cited the positive observations by Moody's in its analysis of the financial strength of the City, the ratings and conclusions are premised upon implementation by the City of its Five Year Plan, referenced above, and the expectation of increases in the General Fund reserves. The August 3, 2011 affirmation specifically mentions the "recent stabilization of financial operations" and cautions that a lower rating could be occasioned by a decline in the City's General Fund reserves.

Sufficient reserves are necessary, too, to cover operating expenses until revenue is received. Typically, receipts correspond with payment of taxes with most coming in after the first quarter of the calendar year. The reserve enables the city to cover operating expenses at the beginning of the year until those revenue streams commence.

Arguing that the financial state of the City is not "dire," the Union asserts a "recovery" is underway and that public sector entities "will be able to emerge" (Union Opening Statement). This is true, but what is also apparent is that the recovery is fragile and, as the Fact-finder correctly opined, "uncertainties will remain insofar as any meaningful economic recovery in the next several years, and a conservative approach relative to budgetary management is still necessary" (Fact-finders Report p. 8).

Finally in regard to ability to pay, the Conciliator addresses the assertion of the Union that its proposal is more reasonable than that of the City. Acknowledging that the final wage offer of the Union is, in fact, quite reasonable and not inconsistent with some wage increases that are currently being negotiated, the conciliator notes the issue in review is not which wage offer is the most reasonable. Evaluating the same economic data, reasonable minds may differ on a wage proposal, but any wage proposal must take into consideration the entire financial package.

In this case, the conciliator considers the proposals of the Union and the City in the context of *all* statutory criteria, the labor agreement as a whole, and wage increases provided to other city employees. The ability to pay a wage increase does not constitute a mandate that such an increase be implemented, but a consideration of ability to pay is a component along with other relevant factors addressed hereinafter.

Internal Comparables

The Conciliator concurs with the Union that the wages paid to a police officer should not be measured by wages paid to civilian employees in non-safety sensitive positions. Police officers engage in inherently dangerous activities and on a daily basis they put their lives at risk. Officers work non-traditional hours, and while the public is enjoying seasonal festivities, a police officer is working to protect and ensure safe holidays. Because of work schedules, officers may miss functions with family and friends, school and extra-curricular activities of their children, or attendance at faith services. Wages paid to police officers reflect the dangers, demands, and duties of the job.

While the negotiated *wages* paid to a safety service unit are not to be compared with the wages paid other City employees, yet, the *percentage increase* in the base salary of Officers should be kept fairly comparable to percentage increases given other City employees. Morale among employees and good faith between management and the work force justifies some comparability in the percentage increase though perhaps not in the wage itself. Thus, internal comparability is frequently cited as a factor in impasse resolution proceedings, even for safety services.

A comparison of wage increases received by City employees, including non-union personnel, demonstrates consistency in percentage increases (See City Exhibit 31). Though not uniform, the increases indicate a practice on the part of the City to keep wage increases comparable. Past collective bargaining agreements establish internal comparability has factored in contract negotiations between the City and its units.

Historically, OPBA has set the internal wage trend, but with the negotiated wage re-opener and the lump sum payment agreed upon in 2010, the OPBA was no longer the first unit to bargain a three year contract with the City. Subsequent to the fiscal crisis, the first three year contract with the City was negotiated by the Teamsters who agreed upon a three year freeze and a single lump sum payment of $1,000 effective January 1, 2011. Upon the expiration of their contract, the Fire-fighters agreed upon a one year extension with no wage increase in 2012, as the City transitions to a joint fire district. It should be explained that the 3% increase experienced by the Fire-fighters in 2011 was in the last year of their three year contract which had been negotiated prior to the 2008 financial crisis and had been patterned upon agreements with other units. Finally, as to internal comparability, at the time of this hearing, the City has implemented a wage freeze for non-union employees in 2012.

Internal comparability in percentage increases is especially important in challenging economic times. While wage packages and the base salaries will certainly vary, it is essential to maintain fairness among employees. As stated by the fact-finder: "The City's argument is compelling that all employee groups should share the pain and that the safety forces, because they receive the benefit of binding arbitration, should not unfairly benefit at the expense of the other employees" (p. 12). Citing statutory criteria, the Conciliator finds that internal comparability both as a factor traditionally cited in impasse proceedings and also as an element in past collective bargaining agreements between the parties sustains the position of the City.

It is important to note that to ensure consistency among City employees, the Fact finder recommended a "me-too" clause which is included in the offer of the City. Should another unit or group of employees receive an increase in wages or a cost of living increase, then the same increases shall be paid to this bargaining unit. The intent of the City is to be even-handed with all of its employees and employee units.

External Comparables

Frequently cited in contract negotiations and impasse resolution, the issue of external comparability requires careful analysis. Application of this criterion over more than twenty-five years of public sector collective bargaining establishes that uniformity among bargaining units is neither advisable nor attainable. External comparability has in the past and will in the future include a range with a high and low end.

Even within a similar geographic region, communities can very in terms of property values, tax revenue, or per capita income. Consequently, as evidenced by the Union Exhibit on comparables, cities within a county can offer widely differing base salaries to employees. When comparing wages paid by multiple cities, the use of averages is an imperfect tool, as the very high and the very low figures may skew the data. In the case at hand, eliminating from the Union comparables those cities having the highest and lowest paid officers adjusts the average and aligns the City much more closely with the median city of Huber Heights.

To moderate financial differences between cities as previously cited, parties to collective bargaining agreements have negotiated economic "packages" having benefits and perquisites which, though not rolled into the base rate, have an economic value to the employee as well as cost to the employer. Wage packages for Police Officers may include a variety of components such as longevity, uniform allowance, certification stipends. Thus, when analyzing external comparables, more than just the base wage rate must be taken into consideration. In its presentation on comparables, the Union has included uniform allowance, shift differentials, longevity and a column for "other" benefits, including paramedic certification, pension pick-up, and a performance incentive (See Union Exhibit 12). Yet, even with these benefits, the package is not complete without reference to insurance.

Medical Insurance is one of those wage components having significant financial benefit for the employee and a high cost to the employer. As previously discussed under the heading of *Deference to the Fact-finder,* when issuing his recommendations, the Fact-finder endeavored to balance those two issues before him, recommending current contract language on insurance with a wage freeze and a second lump sum payment in the final contract year. Even if the issue of insurance is not before her, a consideration of wages without medical insurance distorts the economic package as recommended.

When looking at the comparables suggested by the Union, the Conciliator has also considered the insurance provisions in those contracts. On its list of comparables, Englewood, already below the City in terms of the total wage packages though very similar to Maimisburg in its general characteristics, has an 85%/15% Employer/Employee contribution to the medical insurance premium (See Union Exhibits 12 and 15). At the lower end of the wage scale in the Union comparables, only Moraine continues to pay 100% of the insurance premium for employees. Officers in Trotwood currently pay 13% of their health insurance premiums. For the three plan options offered by West Carrollton, “The City will contribute eighty-eight (88%) of the monthly premium for any plan during the term of this Agreement,” with employees responsible for 12% of the premium cost.

Through negotiation with its Police Union, Huber Heights, slightly above the City in terms of total wage package on the Union's Exhibit, has modified its insurance coverage effective January 1, 2010 to a High Deductible Health Plan (“HDHP”) with a Health Savings Account (“HSA”). While the Employer pays the premium cost, the deductible contributions for the HDHP are 80%/20%, Employer/ Employee participation. Traditional insurance coverage carried through the duration of 2009 is explained in a letter dated November 6, 2009. Pursuant to the letter, premium contributions are allocated by length of service to the City of Huber Heights. “Employees hired on or after August 15, 2003, shall pay 15% of the premium allocated” (Union Exhibit 15).

The Conciliator could not discern from the information provided the insurance contributions paid by Police Officers in the City of Centerville. Like Miamisburg, Vandalia provides a 90%/10% contribution

Just as the cities of Kettering and Oakwood are standard bearers in terms of salary in the Union comparables, these cities also significantly fund health insurance for their police officers. Oakwood caps its employee cost at $130 per month or $1,560 annually. Members of the Miamisburg unit pay approximately $137.66 per month, or $1,651.98 annually (See City Exhibit 41). From the data presented the relative city and employee cost of health care provided by Kettering is difficult to discern. The City of Kettering has adopted a medical plan including an HSA which the City partially funds by “placing the difference of 17% of each year's premium cost and $2,000/yr single and $4,000/yr. family” in the employee's HSA. Kettering's medical plan also provides that the “Out-of-pocket maximum in--network is $2,000/$4,000, $4,000/$8,000 out-of-network.”

Yet, absent a comparison of per capita income, property values, income tax revenue, and other income sources, the Conciliator can not find that wages paid officers in the communities of Oakwood or Kettering, rather than Englewood, Huber Heights, West Carrollton, Moraine, Vandalia or Trotwood, should be the basis of her comparison. It can be concluded, however, that while wages paid by the City may be slightly lower than the average as cited by the Union, its medical insurance remains a significant economic benefit to the members of the Police unit.

A review of the comparables cited by the City confirms this conclusion (See City Exhibit 36). While the City uses some of the same comparables as the Union, it also cites the cities of Beavercreek, Fairborn, Piqua and Springboro. The results are very similar. Considering Miamisburg in relations to the four additional cities, Piqua and Beavercreek rate above the City in terms of entry level wages, while Fairborn and Springboro are below. For the referenced four cities in relation to Miamisburg, the ranking shifts when considering top level wages. Miamisburg exceeds Fairborn, Piqua and Springboro in terms of top level wages, and is only below Beavercreek, which, significantly for comparative purposes, has implemented a wage freeze for 2012.

When looking at health insurance, the cities of Piqua and Fairborn have an 87%/13% and a 79%/21% employer/employee participation, respectively. Both Beavercreek and Springboro provide the same participation rate as Miamisburg. Nothing in these comparisons establish that the City is lagging behind in terms of wages and benefits or that an increase in wages during this contract term is required to keep the bargaining unit consistent with similar neighboring communities.

Just prior to negotiations, the City and an Employee Health Insurance Committee including representation from various employee groups including the Police examined health care options such as an HDHP. It was the consensus of the Employee Committee to maintain the current plan. Arguing that this decision necessitated cost-savings measures, the City negotiated an across the board wage freeze with its employee units and implemented the same for its non-union employees. Coming into negotiations with the Union for the re-opener, the City argued that if a wage increase were implemented, then the increase should be off-set by some relief from rising health care costs. In the case now pending, the issue of wages simply cannot be fairly reviewed without consideration of health insurance.

As to external comparables, the Fact-finder had concluded that a "soft-freeze" for 2012 and 2013 "would not cause a substantial variance in the present wages *and benefit comparisons* with departments in the area" (Fact-finding Report, p.11). The Fact-finder recommended maintaining the current medical insurance for employees without a wage increase. In the opinion of the Conciliator, this recommendation appears consistent with the data on external comparables. In considering the criterion of external comparability, the Conciliator can find no basis for modification of the fact-finding recommendations.

Conclusion

Upon a review of all the extensive documentation provided, the Conciliator finds the previously recommended wage proposal consistent with statutory criteria. In reaching this decision, the conciliator has considered ability to pay, external comparables, and past collectively bargained agreements. As components of factors traditionally relied upon by neutrals in contract impasse proceedings, the conciliator has considered internal comparables and the reasoning and rationale of the fact-finder.

Award

The conciliator awards the final offer of the City on the matter of wages, to-wit: a wage freeze for the final two years of the Agreement and a lump sum payment of $1,000 not added to the wage rate, payable in the first pay period following July 1, 2012. Additionally, the conciliator awards the following language: "If any other group of employees (i.e. administration, management, non-bargaining unit employees, or other organized unit members) receives a cost of living increase, or an across-the-board pay increase, the same increase shall be paid to bargaining members under this Agreement for the same period of time."

Respectfully submitted,

/s/ Margaret Nancy Johnson

Service

The foregoing report has been issued electronically this 21st day of December, 2011, to the City at dcrain@fbtlaw.com; to the Union at jmhege@sbcglobal.net; and to SERB at Mary.Laurent@serb.oh.state.us.

/s/ Margaret Nancy Johnson