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In the Matter of Conciliation

Between

SERB Case No. 2016-MED-10-1115

Ohio Patrolmen's Benevolent Association

and

Before: Harry Graham

The City of Middleburg Heights, OH.

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**APPEARANCES:** For Ohio Patrolmen's Benevolent Association:

S. Randall Weltman  
OPBA  
P.O. Box 338003  
10147 Royalton Rd. Suite J  
North Royalton, OH. 44113

For The City of Middleburg Heights, OH.:

Jazmyn J. Stover  
Seeley, Savidge, Ebert & Gourash Co.  
26600 Detroit Rd., Suite 300  
Westlake, OH. 44145

**INTRODUCTION:** Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record was closed at the conclusion of oral argument in Middleburg Heights, OH. on August 18, 2017.

Prior to this proceeding the parties had recourse to Factfinding before Dr. Dennis Byrne. Dr. Byrne is a very experienced neutral. His findings and recommendations are

due great weight. The report of the Factfinder was not mutually accepted, hence recourse to Conciliation.<sup>1</sup>

**ISSUES:** There are two issues in dispute between the parties. These are:

- 1 Wages
- 2 Health insurance

### **ISSUE 1, WAGES**

**POSITION OF THE UNION:** The Union is mindful of the Report of the Factfinder. It embraces his Report. Dr. Bryne recommended three annual wage increases of 2.5%.<sup>2</sup> He recited the history of negotiations in Middleburg Heights and noted the view of the Union that it had accepted smaller than standard wage increases in exchange for continuance of the excellent health insurance plan provided by the City. That arrangement is breaking down. Thus, his recommendation for the three 2.5% wage increases.

From the date of the Factfinding hearing, April 28, 2017, to today nothing has changed in the economic circumstances of the City. The Factfinder “examined all of the data presented by both parties and finds that the City’s financial condition does not preclude it from meeting the Union’s wage demand. That is, the City can afford to meet the Union’s 3.0%/yr. demand.”<sup>3</sup> Recall now the Union has reduced its proposal from 3.0% to 2.5% for 2017, 2018 and 2019 respectively. Thus the Union claims scant consideration should be given to any claim of financial hardship by the City.

The Union is well-aware of settlements with other organized employees in City service as well as the extension of the terms of those settlements to non-organized

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<sup>1</sup> At the hearing the parties executed an agreement waiving ORC 4117.14 (G)(11) permitting me to make an award including retroactivity on economic issues.

<sup>2</sup> SERB Case No. 16-MED-10-115, Byrne, p. 1

<sup>3</sup> Bryne. p. 4

employees. The wage increase provided by those terms call for a 2.0%, 2.33% and 2.66% wage increase to be made for 2017, 2018 and 2019 respectively. Any claim that a “pattern” exists in City service should be rejected the Union asserts. It is negotiating and utilizing the statutory dispute resolution mechanism for this bargaining unit alone. It stands independent of all other groups of City employees it asserts. Further, acknowledging the commonality of wage and benefit changes across City service some groups received “wiggles.”<sup>4</sup> The pattern is not iron-clad.

The Union also points to the relationship between health insurance and its wage proposal here. It is the case that the City has provided excellent health insurance. To some extent that will change no matter the outcome of this proceeding. Bargaining unit members will pay more for health insurance. The plan will be less favorable. As a result they should receive a wage increase that accounts for the change in health insurance according to the Union. Based upon these factors the Union urges an award on its behalf.

**POSITION OF THE EMPLOYER:** As the City relates the history of compensation in Middleburg Heights there is commonality within the various groups of City employees, organized and non-organized alike. As set out above, all City employees have received or will receive the same wage increases, 2.0% for 2017, 2.33% for 2018 and 2.66% for 2019. There is a pattern in City service. That pattern does not hold for this round of negotiations alone. Rather, the concept of pattern bargaining has been the case in City service for many years. As that is the case no group should be able to deviate from the City-wide settlement the Employer asserts.

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<sup>4</sup> “Wiggles” is a collective bargaining term of art along with “squishy.”

The City points to its finances in support of its wage proposal. From 2007 through 2016 receipts from the property tax have declined. In 2016 the City transferred funds from the capital account to the General Fund. Further, as is well-known in Ohio, the longstanding Local Government Fund has been phased out. So too has the inheritance fund. These developments have obviously affected City finances adversely. As the history of negotiations in Middleburg Heights shows a pattern and City finances have been negatively affected by actions of the State no alteration in the well established 2017-2019 wage increases should be made according to the City.

**DISCUSSION:** Like Factfinder Byrne I have examined the financial data provided by the parties regarding the fiscal condition of the City. Particular attention is directed to Union Exhibit 4, the report of Moody's Investors Service regarding City finances. That report is dated January 9, 2017. It is current. Moody's found the credit position of the City to be "excellent." It assigned an Aa1 rating to City debt and stated that rating was "above the median rating of Aa3 for cities nationwide."<sup>5</sup> Moody's is an independent credit rating service whose reports are relied upon by investors seeking judgment about the credit worthiness of a debt issuer. Moody's had a positive view of City finances. The Factfinder found the City well able to meet the wage proposal of the Union. I do as well. The City can afford to pay. The question is whether or not it should pay?

In this situation two well recognized factors are present. One is the existence of pattern bargaining in the City. The other is the well-reasoned and thorough report of the Factfinder. The City is correct to point out that pattern bargaining is given great weight in proceedings of this nature. So too is a factfinding report. John T. Meredith noted as much in SERB Case No. 12-MED-10-1135 involving the OPBA and the City of Warren,

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<sup>5</sup> Union Ex. 4, Moody's Investors Service, Issuer Comment, January 9, 2017, p. 1.

OH.<sup>6</sup> It was his view that it is “common practice among conciliators of giving very significant weight to well-reasoned recommendations of the Fact-Finding Report issued in the case, absent change in circumstances or material new evidence. (See, for example: City of Lakewood and IAFF, SERB Case No. 00-MED-04-0952, (Dennis Byrne), City of Warren and OPBA, SERB Case No. 05-MED-10-1267, (Harry Graham), City of Medina and OPBA, SERB Case No. 05-MED-08-0785 (Alan Miles Rubin).”<sup>7</sup>

Conciliator Meredith expressed the majority viewpoint.

Further, in this situation the concept of pattern bargaining is not iron-clad. Another group in City service, the Local Association of Public Service Employees recently completed negotiations with the City. The parties went to Factfinding.<sup>8</sup> I was the Factfinder. I recognized the existence of pattern bargaining in Middleburg Heights and recommended the pattern wage settlement. I further recognized that members of the bargaining unit represented by the Local Association earned less than their counterparts in the area that there should occur one-time lump sum payments to them of \$475 in 2017, \$500 in 2018 and \$525 in 2019.<sup>9</sup> There is pattern bargaining Middleburg Heights but the pattern is attenuated.

Based upon the preceding discussion I award the position of the Union on wages. There should occur a 2.5% wage increase in 2017, a 2.5% wage increase in 2018 and a 2.5% wage increase in 2019. The 2017 wage increase should be retroactive to January 1, 2017.

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<sup>6</sup> SERB Case No. 12-MED-10-1135, OPBA and City of Warren, OH. Meredith, Conciliator, April 9, 2013.

<sup>7</sup> Meredith, p. 3.

<sup>8</sup> SERB Case No. 2016-MED-10-1290, Local Association of Public Service Workers and City of Middleburg Heights, OH. Graham, Factfinder, May 30, 2017.

<sup>9</sup> Graham, pp. 7-8.

## **ISSUE 2, HEALTH INSURANCE**

**POSITION OF THE UNION:** As was the case in the wage issue above, the Union embraces the recommendation of the Factfinder. He recommended there be a deductible of \$375.00 single and \$750.00 family for 2018 and \$500.00 single and \$1000.00 for family in 2019. He also recommended there be a payment of 5.0% of premium cost by employees towards health insurance. Given the rationale set out by the Factfinder which the Union reluctantly accepts no further alterations in health insurance should be made the Union urges.

**POSITION OF THE EMPLOYER:** The City again points to the pattern in City service. That pattern has not been altered for any group of employees. The Employer contemplates the following to take effect in 2018: a \$200.00 single and a \$450.00 family deductible. For 2019 the amounts are \$250.00 single and \$500.00 family. Plus, the City proposes there be a 7.5% employee payment towards the Employer's COBRA rate in 2018 and a 10.0% payment in 2019. City Exhibit A is the report of the State Employment Relations Board regarding the cost of health insurance in Ohio public jurisdictions for 2017. It is beyond doubt that employees of Middleburg Heights compare very, very well to their counterparts elsewhere in the state and in the Northeast Ohio area. That favorable comparison will continue with adoption of its proposal the City points out. As there is a city-wide pattern with respect to health insurance and the change it proposes is incremental the Employer contends its proposal should be awarded.

**DISCUSSION:** Per the preceding discussion regarding the weight to be given the recommendations of a Factfinder in proceedings such as this I attach great significance

to the analysis and recommendations of Factfinder Byrne. In sum, he was of the view that the proposal of the Employer on this issue represented an unreasonable burden on employees.<sup>10</sup> He recommended there be a \$375.00 single and a \$750.00 family deductible for 2018 and a \$500.00 single and \$1000.00 family deductible for 2019. That is awarded. The Factfinder also recommended there be a 5.0% payment by employees towards the cost of health insurance per month to commence in January, 2018. That is awarded. Lastly, the Factfinder recommended creation of a City-wide health care committee to deal with issues related to health care. That is awarded as well.

Electronically signed and dated this 31<sup>st</sup> day of August, 2017 at Solon,  
OH.

Harry Graham  
Conciliator

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<sup>10</sup> Byrne, p. 18.