

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

**STATE EMPLOYMENT
RELATIONS BOARD**
2003 OCT 22 P 1:53

In the Matter of)
Fact-Finding Between:)

CITY OF CLEVELAND)

-and-)

OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)

Case No. 00-MED-01-0043

Jonathan I. Klein,
Fact-Finder

**FACT-FINDING REPORT
and
RECOMMENDATION**

Appearances

For the Union:

Jeff Perry - Business Agent
Felipe (Phil) Davila, Sr. - Chief Dispatcher

For the Employer:

Jon M. Dileno, Esq. - Attorney for City
James Walsh - Capt./Communications
Margaret Downing - Commander
Robert H. Baker - Director of Finance
William M. Menzalora, Esq. -
Assistant Dir. Of Law
Tony Washington - Labor Relations Mgr.
Nycole D. West - Labor Relations Asst.

Date of Issuance: October 20, 2003

I. PROCEDURAL BACKGROUND

This matter came on for hearing on September 18, 2003, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on March 20, 2000. The hearing was conducted between the City of Cleveland (“City” or “Employer”), and the Ohio Patrolmen’s Benevolent Association (“Union”), at the Burke Lakefront Airport, Cleveland, Ohio. The bargaining unit involved in the fact-finding process consists of the City’s six (6) chief dispatchers.

The Union attempted to organize the bargaining unit in 1999 and filed a petition for a representation election with the State Employment Relations Board (“SERB”). The City filed objections to the proposed unit, and SERB ordered a hearing to proceed on the question of the appropriate bargaining unit on May 27, 1999. (Union Ex. 1). In August 1999, the City’s assistant law director filed a notice withdrawing the objection to the Union’s petition for representation election, and by order dated November 18, 1999, SERB ordered an election to be held on December 8, 1999. (Union Exhibits 3 and 4). SERB certified the election results and the Union as the exclusive representative of the bargaining unit employees on January 6, 2000. (Union Exhibit 6).

After this fact-finder was appointed on March 20, 2000, the City filed a petition for unit clarification with SERB, and the fact-finding process was held in abeyance pending resolution of various motions filed by both parties. In September 2002, the City filed a motion to withdraw its Petition for Amendment of Certification, and the parties eventually commenced negotiations over the terms of the initial collective bargaining agreement.

The parties have reached agreement on all issues except for wages, which issue was negotiated to impasse in June 2003.¹ While the terms of a collective bargaining agreement have yet to be finalized, the bargaining unit employees received wage increases in April of 2001, 2002 and 2003 consisting of 3%, 3.5% and 4%, respectively. In 2003, three of the chief dispatchers received an additional increase in compensation so that all of the City's chief dispatchers are being paid at the top step of the current pay band, or \$43,387.

The fact-finder incorporates by reference herein all tentative agreements between the parties relative to the current negotiations. In making the recommendation which follows, the fact-finder has carefully reviewed in detail the arguments and evidence presented by the parties at hearing and in their respective position statements.

II. FACT-FINDING CRITERIA

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

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related

1. The parties agreed that the new collective bargaining agreement shall expire on March 31, 2004.

to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

III. CONTENTIONS OF THE PARTIES

The Union reasons that its proposal is consistent with the wage pattern set with internal bargaining units throughout the City during the same time frame, with one notable exception: it seeks an additional one percent (1%) added retroactively to the initial year of the agreement, 2001. Such an increase will place the bargaining unit in a position of internal parity with other safety force units within the City who enjoy a rank differential of sixteen percent (16%). In essence, the Union submits that a fifteen percent (15%) increase has historically been provided between dispatchers and chief dispatchers.

As part of its presentation, the Union emphasizes SERB's annual ten-year wage settlement report, and the admittedly slim evidence of comparable "chief dispatcher" units in

the State of Ohio. (Union Exhibits 1 and 2). Further evidence of the bargaining unit's reduced rate of compensation is demonstrated by comparison with suburbs such as Solon, Ohio. (Union Ex. 3). In addition, the Union proposes a two-step wage schedule as compared with the City's four-step contract offer. This position is also consistent with the City's firefighters and police, together with their sixteen percent (16%) rank differential.

The fact that this bargaining unit is at the tail-end of the negotiations between the City and its bargaining units is not the fault of the Union, but rather is due to the City's unsuccessful efforts to dismantle the bargaining unit. There is no mention of an inability to pay whether or not the City is actually in a financial crisis. The chief dispatchers are part of the safety forces and should be compared to police officers. Any reduction in the rank differential percentage between the patrolmen and sergeants resulting from the most recent set of negotiations will be reimplemented in the future, and represents an anomaly.

The Union agrees that pattern bargaining within the City is a well-established fact, but there are reasons to go against the pattern, if not by means of a direct wage increase. When the fact-finder examines Union Exhibit 5, it will be self-evident that Commander Downing implemented what was correct and placed the chief dispatchers at the top of the wage structure. The Union is seeking to add an additional step to maintain parity within the ranks of the safety forces, but the fact that the present chief dispatchers received an increase is simply the result of their promotion from dispatcher, and is not due to an increase in the pay band.

In support of its wage proposal, the City reasons that despite the current budgetary crisis the bargaining unit of chief dispatchers has not been asked to make wage concessions.

Just the contrary, in fact, exists – the bargaining unit of chief dispatchers received wage increases at the same percentage level as all other City bargaining units: 2001 – 3%; 2002 – 3½%; and 2003 – 3½%. While it is true that the City’s patrol officers received a \$1,000 equity adjustment thereby reducing the rank differential from the existing 16%, the 16% differential remains intact between sergeants and lieutenants. It was Mayor Jane Campbell’s decision that an equity adjustment of \$1,000 should be made to the top two patrolmen tiers because the patrolmen were compensated second to last among bargaining units in Cuyahoga County.

In contrast to the police, dispatchers are not sworn officers, and they perform neither the same job nor experience the same risk as police officers. Consequently, the compensation received by the dispatchers cannot be justified at the same level. With regard to the so-called discretionary merit increase of \$250, such a payment had become virtually automatic in all but a few instances, and it is not truly representative of an additional \$250 increase. Similarly, the marksmanship payments have a long history in the collective bargaining relationship whereby patrolmen had received compensatory time off of two days for marksman, three days for sharpshooter and four days for expert qualifications. The only change for patrolmen is the City’s agreement to offer pay *or* compensatory time to the employee qualifying for marksmanship payments – it does not, however, represent a new benefit.

The size of the wage increase for incoming police officers only, commonly referred to as cadet pay, is directly related to two, specific factors. First, City Council’s passage of a minimum wage ordinance which set a level higher than the cadets’ previous compensation

level. Second, the increase is related to the patrolmen's bargaining unit representative "walking away" from an arbitration award in its favor for over \$1 million in back pay liability based upon the improper use of cadets. The City contends that it is simply improper to compare police cadets and dispatchers for these reasons in evaluating a wage increase for the bargaining unit.

Pattern bargaining has existed in the City for "years and years," and recently the largest unions, AFSCME and SEIU, have set the pattern. It reasons that certain equity adjustments have been selectively made over the years (*e.g.*, the equity adjustment received by paramedics who still earn less than the City's firefighters), but the City, with its large number of bargaining units, is entitled to require a compelling reason to break the pattern already established by reasonable, rational negotiators.

The City points out that there are no accurate comparables to the position of chief dispatcher. Using dispatcher comparables, for example, including the Union's own figures, it is clear that the City pays its dispatchers a fair wage. At the top wage rate, the City ranks in the middle when compared with the police who rank near or at the bottom when using data from Ohio's largest cities.

The Union, in the City's opinion, has "twisted" the evidence of internal memoranda and recommendations presented as Union Exhibit 5. Commander Downing fought to raise the compensation of chief dispatcher Davila to the top rate within the bargaining unit at approximately 15% above the dispatcher level, and she raised two other chief dispatchers to the same level despite no obligation to do so. Her good faith efforts should not be held against

the City. City Council took note of the fact that this is a six member bargaining unit which will be back at the bargaining table in six months, and there is no evidence to warrant a break in the the pattern bargaining, particularly where one-half of the unit received a 15% wage increase in 2003.

The City's current director of finance, Robert Baker, reviewed the September 2003 presentation made by his office to City Council, which presentation addressed only the general fund into which flows the City's tax revenues. He described the income tax as representing one-half of all revenue to the City, and the bulk of the income tax is paid by those individuals who work in the City compared with those residents who work outside of the City.

Baker reviewed the City's expenditures and highlighted the summary of operations which show the Department of Public Safety as \$8.022 million over budget. When the overall expenditures exceeding the budget are combined with the revenue shortfall, the result is a deficit in the 2003 general fund of \$13.622 million. (City Exhibit 5 at 7). Much of the revenue shortfall comes from a large reduction in the "local government fund" due to a fall in state-wide tax collection, together with far less money generated from the City's proposed increase in fees and fines. Moreover, an anticipated 1½ mills from a right-of-way ordinance will not be realized as the City awaits judicial review of a similar ordinance enacted in Toledo, Ohio. With a single exception, all expenditures are in a negative position.

In a rigorous effort to eliminate the projected deficit, the City has implemented a hiring freeze with a limited amount of back filling and some hiring in the Building and Housing Departments. Travel by all general fund agencies has been cut, and the cemetery subsidy has

been eliminated. Because PERS contributions were made quarterly to the Trust and Agency Fund under the prior City administration, but the payouts to PERS came from the general fund, the City will be able to transfer \$8.8 million into the general fund on a one-time basis. The end result is a \$1.2 million shortfall which will require reductions in personnel costs through work week reductions or layoffs, and Cleveland is one of the last cities in Ohio to face layoffs. It is difficult to make any projections for 2004, but the fact remains that the current deficit will be covered by a number of one-time revenue transfers which will be unavailable in 2004.

Finally, the City reasons that the Union's request for retroactivity represents an additional 1%, but this bargaining unit has already received pay raises in each of the three years of the collective bargaining agreement which remains to be finalized. While the actions of Commander Dowling were proper as the dispatchers deserved the wage increases, the commander's recommendations had no basis in contract.

IV. FINDINGS OF FACT AND FINAL RECOMMENDATION

Evidence of certain statutory criteria stand out and require the recommendation reached below. First, and of substantial significance to this proceeding, is the long history of pattern bargaining in the City. With two exceptions implemented in 2001 for police officers and paramedics who received equity adjustments due to their significantly low ranking among comparable units, the City-wide pattern has existed for many, many years. The Union does

not dispute this fact, and the fact-finder recognizes the salutary effect such pattern bargaining has on a jurisdiction with twenty-eight bargaining units and over 6,000 employees.

In order to break the pattern, the fact-finder agrees with the City that the Union bears a significant burden to demonstrate that the chief dispatchers must receive a more favorable wage increase than the 3%, 3.5% and 4% already provided to its members relative to other bargaining units performing similar work. It must also establish that the requested increase of an additional 1% is justified when viewed in conjunction with the recent adjustments received by three of the six members of the bargaining unit. (Union Ex. 5). The Union is unable to meet that burden.

This is so for the following reasons. First, there is little probative data to establish the wage rate for chief dispatchers based upon comparable bargaining units. For example, the Union's comparison of benefits for ten year employees in Cuyahoga County for 2003 contains only one jurisdiction, Solon, which even has a position analogous to a chief dispatcher.² The evidence also demonstrates that the Union's members enjoy an average wage differential above the surrounding communities' regular dispatchers of 19.75% at the top wage rate for 2003, 18.85% in 2002 and 20.01% in 2001. (Union Ex. 2). Further, when the department's dispatchers are compared to the top wages for 2003 in Cuyahoga County, the City ranks six out of twenty-one, and third out of the major Ohio cities. (City Exhibit 2). In a comparison

2. Solon has what is known as a "lead dispatcher" position with a top pay for 2003 of \$46,883.20. However, the fact-finder is not persuaded that Solon, an affluent southeastern Cuyahoga County suburb, represents a proper comparable jurisdiction to the City.

with 2002 dispatcher data available from Cincinnati, Toledo, Akron, and the City's own dispatchers, according to the Union's data, the bargaining unit is slightly above average. (Union Ex. 3).

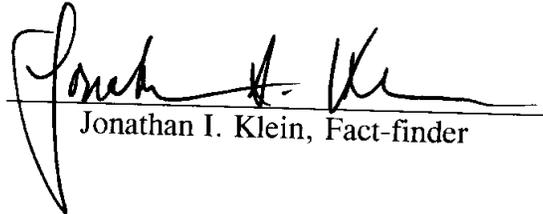
Finally, the evidence presented on the City's finances overwhelmingly establishes the difficult financial circumstances prevailing at this time. None of the evidence establishes a complete inability to pay – even the City acknowledges it would be able to raise the money necessary to grant the Union the wages it seeks. Nevertheless, the fact-finder concludes that any unjustified change in the pattern of wage increases would have a ripple effect throughout the City with financial implications far beyond the scope of this six member bargaining unit.

Final Recommendation

Based upon all the evidence presented, the fact-finder recommends the City's position on wages be incorporated in the collective bargaining agreement. In so doing, the fact-finder recognizes that new contract negotiations are only months away, and the ability to fine tune the bargaining unit wage structure, including the applicable number of steps, can be more fully explored at that time.

CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendation were served upon Jon M. Dileno, Esq., Duvin, Cahn & Hutton, Erieview Tower, 20th Floor, 1301 East Ninth Street, Cleveland, Ohio 44114, and upon Jeff Perry, Business Agent, Ohio Patrolmen's Benevolent Association, 10147 Royalton Road, North Royalton, Ohio 44133, and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 20th day of October, 2003.


Jonathan I. Klein, Fact-finder