

STATE EMPLOYMENT
RELATIONS BOARD

2002 DEC -4 A 10: 12

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-Finding Between)	<u>FINDINGS AND RECOMMENDATIONS</u>
OHIO PATROLMEN'S BENEVOLENT)	
ASSOCIATION)	CASE NO. 01-MED-09-0854
and)	
CITY OF BEACHWOOD)	DECEMBER 2, 2002
)	
)	CHARLES Z. ADAMSON, FACT-FINDER

For Ohio Patrolmen's Benevolent Association:

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For the City of Beachwood:

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The undersigned was appointed Fact-Finder in this dispute by the State Employment Relations Board (SERB) on November 23, 2001 pursuant to Section 4117.14(C)(3) of the Ohio Revised Code in respect to a unit of dispatchers employed in the Police Department of the Employer, Beachwood, Ohio. The applicable collective bargaining agreement expired December 23, 2001 but has been extended in accordance with the agreement of the parties. The parties agreed that all provisions of the collective bargaining agreement involved herein will be retroactive to December 24, 2001 and will expire as of midnight December 23, 2004.

I. HEARING

After mediation the case proceeded to hearing on October 29, 2002 as to the issues where the parties had reached an impasse. The issues remaining at an impasse are the following:

- | | |
|----------------------|--------------------------------|
| 1. Wages | 5. Uniforms and Equipment |
| 2. Compensatory Time | 6. Training Reimbursement |
| 3. Vacations | 7. Sick Leave/Attendance Bonus |
| 4. Medical Insurance | 8. Miscellaneous |

II. CRITERIA

In compliance with Ohio Revised Code, Section 4117.14(C)(4)(3) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues 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 the private employment.

ISSUES AND RECOMMENDATIONS

WAGES

The Union proposed that the dispatchers receive a 4% wage increase in each year of the contract plus an equity adjustment of 6% in the first year of the contract. The Employer took a position in favor of a 4% wage increase in each of the 3 years of the contract and opposed the 6% equity adjustment.

After considerable discussion and mediation between the parties, I recommend that the unit involved herein receive a 4% wage increase in each year of the 3 year contract.

COMPENSATORY TIME

The Union's Position

The Union proposed that the following be added to Article 14 of the current contract:

Section 3. Compensatory time will not be unreasonably denied.

It believes that compensatory time should not be denied by the Chief of Police solely because it causes overtime. It asserts that this is the current policy in the Police Department and that it should be changed because there are not sufficient employees in the department to cover compensatory time without causing overtime.

The Employer's Position

The Employer opposes the addition of the new provision asserting that the cost of covering compensatory time is the payment by the Employer of 2 1/2 times the wages for one dispatcher for each hour of compensatory time covered. This results from paying the regular hourly wage of the dispatcher taking compensatory time plus paying time and one-half to the dispatcher covering the hour for the employee taking compensatory time.

Findings and Recommendations

It is concluded and recommended that the Union's proposal not be adopted. Including this proposal in the contract involved herein would result in an additional cost which would have to be absorbed by the department's budget. Accordingly, in view of the overall findings and recommendations made in this matter, the Union's proposal is not recommended by the undersigned.

VACATION

The Union's Position

The Union proposes two additions to the vacation provisions of the applicable contract, Section and 1 and 6 set forth below:

Section 1. Annually, each dispatcher in active pay status for twelve (12) months to five (5) years continuous service with the City shall be given two (2) weeks vacation provided further that each such dispatcher with six (6) to ten (10) years cumulative service shall be granted three (3) weeks vacation, that each such dispatcher with eleven (11) to fifteen (15) years of cumulative service shall be granted four (4) weeks vacation, provided further that each such dispatcher with sixteen (16) or more years of cumulative service shall be granted five (5) weeks vacation. The Chief of Police shall have the authority to schedule, suspend, postpone, or cancel vacation days to meet management needs. Effective the first pay period of the year, members will have their annual vacation allotment posted to their balance. This time shall be considered earned at the time of posting. Subsequent to this posting, vacation shall accrue.

Section 6. The dates of vacation shall be determined by seniority and by mutual agreement between the dispatcher and his/her supervisor. Management shall solicit from each dispatcher by January 15th a preference list of vacation dates. The list shall be arranged by dispatch seniority and each dispatcher shall be notified as to which dates are available for his/her choice. The final vacation list shall be posed by February 15th of each year. Dispatchers desiring to take their vacation between January 1st and February 15th of each year, shall notify the Chief of Police, or his designee, in writing, in advance, of their desired vacation time with further provision that the Chief of Police or his designee will act upon said request within seven (7) days of receipt.

The Union argues that the vacation schedule proposed by it Section 1 is more in line with the vacation schedules of most departments in the area and asserts that the present vacation schedule which has been in place for a number years should be changed. In respect to Section 6, the Union indicates that it represents the current practice of the Police Department. It believes that it should be set forth in writing. It notes that employees would like to plan their vacations in advance and it would be easier to do so if the existing vacation practice was actually set forth in the contract.

The Employer's Position

The Employer objects to proposed Section 1 because granting it would result in having the department involved herein having a different vacation provision than the rest of the Employer's departments. The Employer asserts that if there is ever a change in the Employer's vacation policy, it should be made citywide for all departments and not just for the unit involved herein. It also points out that a change in vacation for the dispatches unit could trigger the "Me-Too" provision in the contracts of other Employer units with resulting consequences. In respect to proposed Section 6, the Employer has a problem with its language. It asserts it does not provide the necessary specificity to deal with various problems that could arise as a result of its implementation. It gave as an example a problem where an employee did not present his/her

vacation request to the Employer in a timely manner.

Chief of Police Mark Sechrest testified on behalf of the Employer that he has occupied this position for the past six years. He opposed Section 6 because it would give rise to problems with seniority and shift assignments while the Employer was attempting to achieve proper coverage for each shift. His preference was to allow one dispatcher per shift to be on vacation at a particular time.

Findings and Recommendations

Based on the record in this matter, it is concluded that the Union's proposals in respect to the vacation provisions should not be recommended. In respect to the Union's request for additional vacation time which would be set forth in Section 1, vacation benefits in the public sector are usually fairly generous as compared to the private sector. There is no question that some units of employees in the public sector receive more generous vacation benefits than the unit involved herein. However, there is merit to the Employer's argument that a change in the vacation benefit schedule should be instituted citywide as opposed to starting with one unit. In addition, possible ramifications as a result of the "Me-Too" provisions in contracts of other units should not be overlooked.

The undersigned is cognizant that an employee would prefer to have its Employer's vacation policy set forth in writing in the applicable collective bargaining agreement. On the other hand, the undersigned is not unaware that the addition of Section 6 would set forth a firm contractual limitation in respect to management arranging for vacation coverage in the unit involved herein.

Accordingly, in view of the above and the record as a whole, it is recommended that the

Union's proposals as to vacation provisions should not be adopted.

MEDICAL INSURANCE - LIFE INSURANCE

After considerable discussion and mediation between the parties the undersigned recommends that the following appear in the applicable contract in respect to both medical insurance and life insurance:

Section 1. Members of the bargaining unit shall be entitled to a basic contract hospitalization plan, which shall include the Major Dental Plan, Vision Care Program, and Prescription Drug Service Program or other similar plan chosen by the City on the following basis:

- A. The City shall offer SuperMed Plus (90% out of network) offered by Medical Mutual with a \$10.00 physician co-pay.
- B. The City shall pay the full cost of such hospitalization, including "hearing aid rider."
- C. Prescription coverage shall be provided with co-pays as follows:
 - Generic source - \$5.00
 - Brand source - \$15.00
 - Multi-source with brand selected - \$20.00, plus difference in cost between multi-source and generic.

Section 2. The City may contract (if possible) with another company and/or alternative coverage to maintain substantially similar benefit levels at lower rates. The City agrees to discuss such changes with the Union prior to implementation.

Section 3. In the event another Union or the administration receives a materially better health insurance plan or if the Union feels that any other health insurance plan offered by the City is better for this bargaining unit, the Union may elect one time only that coverage in lieu of the above plan and adopt the contributions that employees are required to make, if any, that are part of the structure of such plan.

Section 4. The City would provide a \$10,000.00 term life insurance policy for each employee in the bargaining unit.

UNIFORM AND EQUIPMENT

After considerable discussion and mediation between the parties, the undersigned recommends that the following be included in the collective bargaining agreement in respect to uniform allowance:

The uniform allowance is \$1,000.00 per year to be paid in \$250.00 quarterly increments during the three years of the collective bargaining agreement between the parties.

TRAINING REIMBURSEMENT

After considerable discussion and mediation between the parties the undersigned recommends that the following appear in the collective bargaining agreement in respect to training reimbursement:

Subject to the approval of the Chief of Police, the Employer shall provide ongoing training for dispatchers, which shall be directly related to their jobs, and pay the cost of that training, including books.

Attendance at any training session or seminar pertinent to police matters and approved by the Chief of Police, shall be compensated at the applicable hourly rate for the session time, attendance and for all travel time in excess of one (1) hour in each direction.

SICK LEAVE - ATTENDANCE BONUS

The Union's Position

The Union proposes a change in sick leave attendance bonus.

The contract currently contains the following provisions:

Section 6. Perfect Attendance Bonus - An employee who has perfect attendance will be provided a perfect attendance bonus as noted below. Such attendance bonus will be paid in January for all perfect attendance in the prior payroll year.

Sick Days Used
Pay Roll Quarter

Attendance Bonus

0

24 hours' pay (3 days)

The Union proposes the following:

Section 6. Perfect Attendance Bonus - An employee who has perfect attendance will be provided a perfect attendance bonus as noted below. Such attendance bonus will be paid quarterly for all perfect attendance in the prior payroll quarter.

<u>Sick Days Used</u>	<u>Attendance Bonus</u>
<u>Pay Roll Year</u>	
0	8 hours pay (1 day)

The Union takes the position that the best type of attendance bonus is one that is attainable by the employees. It maintains that the bonus is more likely to succeed for a quarter year rather than for a whole calendar year. It notes that as soon as an employee calls off sick during the year there is little incentive remaining not to call off sick during the rest of the year. According to the Union this would not be the case with a quarterly system since an employee would always be within reach of a fresh upcoming quarter.

The Employer's Position

The Employer proposes that the sick leave bonus be eliminated in its entirety. It asserts that employees have a duty to attend work when physically able and that that employees should not be rewarded for what is expected of them. It notes that sick leaves fulfill a need and that providing an incentive for not using what is needed is not logical.

According to the Employer, providing a reward for not using sick leave could result in employees reporting to work when they are ill, causing the spread of illness and drawing out the length of recovery. By removing the sick leave bonus, the Employer would hope to insure that only healthy employees would be present at work and sick employees would not show up for work. The Employer further notes that the police union lost this provision in fact-finding and the

service unit gave the provision up in negotiations. It maintains that this provision has never lived up to its potential and is not essential to the contract. It further adds that if the provision is maintained, it would have to be reinstated for the police unit as well as being removed from the fire department negotiations.

Findings and Recommendations

It is the conclusion and recommendation of the undersigned that the Employer's proposal to remove the current sick leave bonus should not be adopted and that the Union's method of calculation on a quarterly basis also not be adopted. Neither party has made a sufficiently persuasive case to change the status quo. It is also noted by the undersigned that the record does not reflect what the service unit received from the Employer in exchange for giving up the sick leave bonus during negotiations.

MISCELLANEOUS

The Union's Position

The Union proposes to add an additional sentence to Article 34, Section 1 and to add a new Section 6. As set forth below, Section 1's additional language is underlined and new Section 6 is set forth in its totality:

Section 1. With consent of the Police Chief, an O.P.B.A. representative may have up to seventy-two (72) hours of paid leave annually to attend O.P.B.A. functions. The Chief's approval shall not be unreasonably denied.

Section 6. In the event that any safety force union receives a labor contract settlement through a negotiated agreement, fact finding, and/or conciliation award applicable to the dates of the contract, that is economically more beneficial than that agreed, recommended or awarded to the OPBA then the City and the OPBA are required to meet and renegotiate the specific matter(s) at issue. The OPBA shall make its demand to reopen on every subject to which it believes this agreement applies. The City agrees to make available to the OPBA the collective bargaining agreement of any other safety force within

24 hours of its adoption.

In respect to the Union's additional language in Section 1, the Union asserts that the added language establishes the legal standard for the police chief's refusal of paid Union time. It feels that it is appropriate to request the police chief to be reasonable in these situations.

The Union asserts that new Section 6 is similar to the memorandum of agreement in the current police contract. It argues that there is no reason for the police to ever receive a financial benefit without granting the same or similar benefit to the unit involved herein. It notes that the police are the top paid unit in Cuyahoga County while the dispatchers are currently in the middle range of all of the dispatchers in the County.

The Employer's Position

The Employer opposes the Union's position as to the Section 1 language, indicating that the language is not necessary and that problems could arise as to the interpretation of the additional language. The Employer takes the position that the addition of the Section 6 "Me-Too" clause would result in a multitude of problems. It points out that dispatchers, fire fighters and patrolmen have different concerns and place different priorities on different issues in their respective jobs; this is the reason why safety forces are not combined into one bargaining unit. It argues that the incorporation of a "Me-Too" clause undercuts the collective bargaining process by avoiding negotiations between a city and individual bargaining units. According to the Employer, it encourages unions not to propose benefits that are of significance to a particular union. The Employer also believes that it is important that a "Me-Too" clause requires an employer to consider the multiplier affect of providing a benefit to an individual bargaining unit. When an

employer enters into negotiations with one bargaining unit it has to keep in mind the effect of a particular provision on another bargaining unit.

Findings and Recommendations

The new language proposed by the Union in Section 1 is not warranted and it is recommended that it should not be adopted in the applicable collective bargaining agreement. The addition of the words “shall not be unreasonably denied” can be subject to many interpretations and can result in a considerable amount of time and effort spent by the parties in determining the meaning of “unreasonable.” It also noted that the current patrolmen’s contract between the Employer and the Fraternal Order of Police does not contain this language. Accordingly, it is recommended that the additional language proposed by the Union in Section 1 should not be adopted in the applicable contract.

The “Me-Too” clause proposed by the Union in Section 6 should also not be adopted for the following reasons. Collective bargaining negotiations between an employer and a union should involve issues that are of importance to both parties. The issues should be set forth at the bargaining table. It incumbent upon the parties to prioritize their concerns and allow a certain amount of flexibility in the give and take of negotiations without also relying on a potential “Me-Too” factor.

There is no question that the duties, responsibilities and working conditions of the police unit and the dispatcher unit involved herein are different. As a result, a “Me-Too” clause for the dispatcher unit would not be appropriate. It would result in a number of problems that never existed before between the Employer and the Union when the Employer attempts to make

adjustments in conformance with the provisions of proposed Article 6. Accordingly, in view of the above and the record as a whole, it is recommended that new Article 6, the "Me-Too" clause, should not be adopted in the instant contract.


Charles Z. Adamson, Fact-Finder

December 2, 2002