

**FACT-FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
APRIL 8, 2002**

STATE EMPLOYMENT
RELATIONS BOARD

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In the Matter of

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The City of Stow

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And

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01-MED-10-0925

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Ohio Patrolmen's

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Benevolent Association

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APPEARANCES

For the City of Stow

James A. Budzik, Attorney

Lee A. Schaffer, Mayor

John M. Baranek, Finance Director

Claudia B. Amrhein, Human Resource Director

For the Ohio Patrolmen's Benevolent Association

S. Randall Weltman, OPBA Attorney

Tammy Boley, OPBA Director

Stephanie Despot Cook, OPBA Director

Fact-Finder, Marc A. Winters

BACKGROUND

The Fact-Finding involves the City of Stow, (hereafter referred to as the "Employer") and the Ohio Patrolman's Benevolent Association, (hereafter referred to as the "Union"). The Union's bargaining unit is comprised of ten (10) full-time Communication Specialist/Dispatchers and Dispatch Coordinator in accordance with SERB rules. The State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder in this matter.

The Fact-Finding Hearing was conducted on Thursday, March 7, 2002, in Stow City Hall. The Fact-Finding Hearing began around 10:00 A. M. and was adjourned at 4:00 P. M. At the beginning of the Fact-Finding Hearing mediation was offered and subsequently declined by both parties.

The Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria the Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, given consideration to factors peculiar to the area and classification involved.
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issue proposed and the effect of the adjustments on the normal standards 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 determining of issues submitted to mutually agree-upon dispute settlement procedures in the public service or private employment.

The following issues were considered at the Fact-Finding Hearing on March 7, 2002:

1. Management's Rights.
2. Union Security.
3. Medical Exams.
4. Hearing Test.
5. Wages/ Step Movement.
6. Wages/ Equity Boost.

7. Wages/ Annual Increase
8. Wages/ Additional Step.
9. Shift Differential.
10. Shift Differential/ Holiday/Overtime/ Premium Paid Hours.
11. Medical Hospitalization.
12. Vision Coverage.
13. Prescription Coverage.
14. Insurance Opt Out Program.
15. Sick Leave/ Overtime.
16. Sick Leave Conversion Rate.
17. Holidays.
18. Uniform Allowance.
19. Zipper Clause.

The Report is attached and this Fact-Finder would like the parties to know that each and every exhibit presented at the Hearing was read and re-read by this Fact-Finder, including the appropriate Articles and Sections of the thirteen (13) Collective Bargaining Agreements submitted.

INTRODUCTION

The primary differences between the parties lies with the economic issues. The major difference in the ways the parties presented their issues at the hearing centers on each parties perspective on internal parity. That is, what amount of weight, if any, should the negotiations, by other City bargaining units, have on the City and this bargaining unit, the Dispatchers. Therefore many of the issues at impasse may be discussed in general terms.

The City has a tentative agreement with it's AFSCME unit comprised of about fifty-five (55) employees. Since the AFSCME unit is the largest of the City's five (5) bargaining units, the City argues that such an agreement becomes the pattern agreement. The City continues to argue that the Fact-Finder should accept the City's position on the impasse issues based solely on such internal parity. Naturally, the Union would disagree with such logic.

As a general rule of labor, the duty to bargain does not cease when the City signs an agreement with one of its bargaining units. However, should a bargaining unit wish to break such a pattern it must present very convincing arguments and evidence.

Pattern agreements can limit what another bargaining unit may ultimately accept, however, such pattern agreements cannot force another union to totally accept the same contract negotiated by another bargaining unit. Nor can a pattern agreement be the only consideration.

The City at this hearing refers to the old adage that the tail won't wag the dog. Meaning a smaller

unit will not change the pattern established by a larger unit who has already concluded its negotiations. This is especially true on benefit items that usually treat all employees of the Employer the same regardless of which bargaining unit they are in or if they are even in a bargaining unit. And as a general rule, a Fact-Finder cannot recommend that any Employer with multiple bargaining units have very different collective bargaining agreements with regards to Employer wide benefits.

A slight difference in these negotiations is the fact that, although the AFSCME bargaining unit is the largest of the five (5) City bargaining Units, it only comprises of about 27% of the total workforce. In this case, the Union cannot be held hostage to an agreement that they did not negotiate or agree to. In accordance with ORC 4117 each and every bargaining unit must attempt to negotiate an agreement that meets the needs of that particular bargaining unit. Keeping in mind the logic behind Employer wide benefits.

With the discussion on internal parity concluded we can also discuss in general terms the external comparisons. Interesting that each party used nine (9) different Municipalities in their comparisons. Six (6) of the nine comparisons were identical and are acceptable for a fair analysis of the unresolved issues. This not to say that the other six (6), three (3) for the Union and three (3) for the Employer, were not used. They were considered where it was fair to both parties do so.

With regards to the City's ability to pay. (Also stated in general terms.) The City, through the testimony of their Mayor, has stated that they are not claiming an inability to pay, only to remain fiscally responsible. The City would like to not go out of line so they may remain affluent. An analysis of the City of Stow's operating budget, with regards to their transfers into the rainy day fund, the unappropriated funds in their capitol improvement account and surplus transfers and carry overs, also collaborates that inability to pay should not be a major issue. Other than the usual unknown uncertainties that all Employers are faced with.

ISSUE: Article III, Subject Matter of Negotiations

City's Position: The Employer proposes to title Section B "Managements Rights" and to add a new Subsection 11, which would read:

"To establish, consolidate, expand or transfer work processes or facilities or to consolidate, merge, transfer its property, processes or work to any other municipality or entity or effect or change in any respect the legal status, management or responsibility of such property, facilities process or work."

Union's Position: The Union rejects the Employer's proposal.

Discussion: The City wants to correct the title of Section B which appropriately is “Managements Right”. The Employer also states that adding subsection 11 is necessary to properly permit the Employer to change the legal status of dispatching operations or to enter into an agreement with a 9-1-1 emergency center or similar joint venture if operational needs dictate. The Employer further notes that this language is contained in a number of OPBA dispatcher labor agreements.

The Union, on the other hand, is unwilling to volunteer to such language absent some consideration. The Union further states that they believe the current language would accomplish what the Employer is trying to do.

Finding of Fact: Based upon the testimony and information presented, I find that the Employer’s request, in this case, to be reasonable and in line with other collectively bargained “Managements Rights” clauses.

Suggested Language: As proposed above.

Issue: Article VII, Union Security

Union’s Position: The Union proposes to replace their “Maintenance of Membership” provision with a “Fair Share Fee” provision.

City’s Position: The City’s position is two-fold. One, the Employer would agree to a Fair Share Fee provision for all new hires, but would grandfather current employees. Two, the Employer proposes language where an employee can withdraw or revoke union authorization.

Discussion: The Union states that in the year 2002 virtually every public sector labor contract contains a fair share fee provision. The Union further argues that currently all ten dispatchers are Union members.

The Employer’s primary concern is with requiring all current employees to become fair share fee payers. The Employer offers fair share fee language which they negotiated with their AFSCME bargaining unit.

Finding of Fact: Based upon the evidence presented, I find that the Union’s proposal to be reasonable with the Employer’s concerns incorporated.

Suggested Language: Fair Share Fee

Each Bargaining unit employee hired after the execution date of this Agreement, who does not become members in good standing of the Union , shall pay a fair share fee to the Union as a condition of employment. Each bargaining unit employee who was employed prior to the

execution date of this Agreement shall not be required to pay a fair share fee.

The fair share fee shall be in an amount certified to the Employer by the Union. The deduction of the fair share fee from the employee's paycheck shall be automatic and does not require the written authority from the employee. Payment to the Union of the fair share fees deduction shall be made in accordance with the regular dues deduction as provided herein.

Issue: Article VIII, Medical Exams

Union's Position: The Union proposes to add free annual hearing exams.

City's Position: The City proposes to insert language that would permit the Employer the right to request or require fitness for duty or return to work medical exams.

Discussion: The Employer agrees to giving annual hearing exams in exchange for language that would permit it to authorize a medical exam as a result of a fitness for duty or return to work. The City would provide written notice to the employee with an explanation of the rationale for the required examination. The Employer further notes that their AFSCME unit agreed to similar language in their new successor agreement. Also that such exams are for the safety and protection of others.

The Union argues that it can not voluntarily agree to such fitness for duty medical exams without some consideration nor could they agree to it without some safeguards such as being able to grieve.

Finding of Fact: Based on the evidence presented and the discussions during the hearing, I find that both proposals are reasonable.

As to the Union's concerns for safeguards. After careful review of the parties grievance procedure, I find that the Union is not precluded from filing a grievance over an employee, who in the Union's opinion, is unreasonably required to take a medical exam or if there is lack of cause for such a request or requirement.

Suggested Language: Medical Exams

With notification to the employee, a medical examination may be requested or required by the City at the time of initial hiring or, as a result of an accident, injury, serious illness, fitness for duty or return to duty involving a bargaining unit employee. On an annual basis, the City shall provide hearing testing to bargaining unit employees.

Issue: Article XVII, Wage/Compensation Schedule

Union's Position: The Union is demanding four (4) items in regards to compensation. 1. A step

movement. 2. \$150 per hour equity boost. 3. 6% wages increase for each year of the agreement. 4. To add an additional step that equals 15% above the current step 4.

City's Position: The City is offering a 3% wages increase for each year of the agreement.

Discussion: The Union initially proposes four (4) different concepts designed to improve the current wage scale. There is a proposal to move the employees through the scale quicker. There are three (3) different proposals to increase wages.

The Union's mandate entering into negotiations was to improve the wage scale, not only in terms of wage increased but in terms of wage scale inequities. This is because the Union feels wages in Stow have not kept in line with the increase in work assumed by bargaining unit members.

The Union states that their proposals are justified by the external comparables. The Union further claims that when the base rates and/or pay packages of this bargaining unit are compared to other similar units, an unjustified disparity is revealed. Additionally the Union claims that even though the disparity lessens as an employee gains years of service, after those years of service, the overall package is only average justifying, at the least a "going rate" wage increase together with some other gains.

The Employer argues that the Union's proposal is clearly and patently excessive. The City has maintained during negotiations that it has limited ability to fund the contract and that it simply cannot afford the Union's unwarranted demands.

The City has proposed a wage increase of 3% each year of the Agreement. The City argues that this is in line with inflationary rates, the City's ability to pay and past negotiations history settlement. The City submits the wages paid to its dispatchers are in line with the surrounding communities.

It is true that the Stow Dispatchers are not the highest paid, nor are they the lowest. It is also true, by looking at all the external comparables and comparing years of service and the various steps it takes to progress through their respective wage scales, that the Stow Dispatchers gain ground as they gain years of service. Looking at both, the Union and the City's external comparables, shows that the Stow Dispatchers fall well in the middle of the pack or are average in comparison to all other externals. With the exception of the first year employee, who falls much lower than all other equal compatibles. Green and Cuyahoga Falls however, are extremes to each end of the spectrum and throw a curve into using all other externals. Neither provide a true picture as to the going rate for dispatchers.

Union witnesses testified to and put into evidence an exhausted list of new duties and responsibilities that they acquired since the last negotiations. These new duties are part of the Union's argument to persuade this Fact-Finder as to why they deserve such a high wage increase.

Unfortunately, it is not always quantity that gets you more money. A job analysis and a job evaluation or re-evaluation would be needed to quantify the new responsibilities in terms of adding increases to the wage scale. Absent of that kind of evidence, this Fact-Finder is reluctant to increase wages based on quantity alone.

In keeping with the discussion in the introduction portion of this report, I must point out that in the City's AFSCME negotiations, the party's arrived at wage increase of 3.5% for the first year and 3.25% for the second and third years of the Agreement.

Finding of Fact: I find that as part of a package settlement, the following to be fair and appropriate.

1. New employees will be advanced from Step 1 to Step 2 upon their completion of training and probation.

- 2. Effective January 1, 2002 - 3.5% wage increase
- Effective January 1, 2003 - 3.25% wage increase
- Effective January 1, 2004 - 3.25% wage increase

Suggested Language: Incorporate the above into the existing wage scale.

Issue: Article XVIII, Miscellaneous Financial Provisions

Union's Position: The Union proposes the following modifications to shift differential.

1. To include shift differential then in effect as part of the holiday rate. 2. Increase the shift differential by 25 cents per hour. 3. By deleting language that currently removes shift differential from being paid on overtime hours, holiday pay or any other premium pay .

City's Position: The Employer rejects the Union's demand and proposes status quo.

Discussion: The Union argues that the Agreement denies payment of the current shift differential to employees who work on holidays and earn premium pay. The states that the theory that justifies shift differential would seemingly better support payment of shift differential on holidays. According to the Union there is not a valid basis to deny shift differential on a holiday .

The Union also proposes to increase the current shift differential by 25 cents per hour. The Union states that this increase would represent a small increase to the total economic package.

The Union also proposes to eliminate the current prohibitions against paying shift differential on not only holidays, but also on overtime hours or other premium paid hours.

The Employer opposes each modification citing that it would be fiscally irresponsible to agree to those provisions.

Other than Twinsburg, the City of Stow Dispatchers have one of the most generous shift differential allowances going. Citing both internal and external comparisons.

Provisions for the non-allowance of pyramiding of benefits, such as making shift differential as part of holiday, overtime or any premium pay is as common in public sector contracts as they are in private sector contracts. Absent convincing evidence as why such provisions should be disturbed, there would be no apparent reason to make such a modification.

Finding of Fact: The Union did not prove that the Dispatchers shift differential to be substandard nor did the Union prove that the practice of non-pyramiding of benefits should be modified.

Suggested Language: Current Language.

Issue: Article XVIII, Miscellaneous Financial Provisions

There are several health/medical insurance issues that may be discussed together based on the previous general discussion, under introduction, concerning internal parity and pattern bargaining.

Union's Position: The Union proposes the following changes to the health insurance program.

1. Add vision coverage plan for eye exams and glasses as well as providing for corrective eye surgery. 2. Add prescription coverage plan at the level of \$5.00 for generic and \$10.00 for brand names. 3. Add an opt-out program for those who does not elect to take health coverage of \$150.00 per month.

City's Position: The city rejects the Union's proposals and proposes modifying the medical hospitalization by increasing deductibles to \$250.00 for single and \$500.00 for family annually and to implement an employee contribution rate towards premiums of \$25.00 per month single and \$50.00 per month family. The Employer also a "steering" program whereby employees who utilize non-network providers are provided less payments towards deductibles and the Employer will raise the lifetime maximum from \$1 million to \$1.5 million dollars.

Discussion: The Union argues that the Agreement's insurance provision is in sore need of improvement. The prescription card plan requested by the Union is the prevailing way that Employers provide their employees with prescription coverage. The Union states that their proposals are supported by all the external comparables. The Union further states that the City's proposals for concessions are not supportable under any valid analysis.

The City opposes the Union's proposals as excessive and inconsistent with established health benefits for all other City employees. The City further argues that the Union utilizes the "scattergun" approach by demanding as much as it possibly can but with out knowledge of the economic impact on the City because such health benefits are equal to all City employees.

The City claims that there proposals will help keep premiums down and keep the City fiscally

responsible, adding that employees both state-wide and regionally pay something towards healthcare.

The issues here goes back to the heart of the early discussion with regards to internal parity and pattern bargaining.

The Employer does not want to give this Union anything more than what the Employer's AFSCME unit has already settled for. Which for all intents and purposes constitutes pattern bargaining in the Employer's eyes for benefits that are equal to all.

The City would like to keep their employees equal as far as benefits. I agree that such an equity rule is appropriate.

In the AFSCME negotiations, the City of Stow and AFSCME agreed to the following changes;

The life time maximum was increased from 1 million to 1.5 million dollars.

The individual and family deductibles were increased to \$250 and \$500 respectively.

The City instituted a "steering" provision in the health insurance PPO plan whereby in-network reimbursement will remain at 80% out of network reimbursement will be 70%.

I find that the three above-listed items to also be fiscally responsible for the City and appropriate for the Stow Dispatchers.

The AFSCME unit does not pay a premium co-pay and neither should the Stow Dispatchers.

The Union had also requested an opt-out provision. However, no evidence was presented to show what the usage would be, or what the savings to the City could be, if any.

The Union also is requesting a vision plan and a prescription card coverage. The Union states these proposals are overwhelmingly supported by external comparables. Even the City's AFSCME unit receives such benefits under their AFSCME health and welfare fund.

The Union is correct. Almost each and every comparable used by both the Union and the City has vision and prescription card coverage.

Now comes the City's argument of internal parity and pattern bargaining. Whereby the City does not directly provide such coverage to any other City unit.

However, keeping in mind internal parity and the equity rule where all employees are equal in terms of City wide benefits. The City of Stow contributes \$29.75 per month per AFSCME member to the AFSCME health and welfare fund. AFSCME then in turn provides its members

various benefits including vision and prescription card benefits. Which is an indirect benefit paid for by the City of Stow. And, which is a sum of money and a benefit not given to other City Employees including the dispatchers.

One only needs to do the math. If you take 55 AFSCME members times \$29.75 per month for a year would be a contribution of well over \$19,000.

Looking at internal parity and equity and the City's exhibit from SERB, showing the health insurance comparisons, which has identified the average cost of prescription drug cost for single and family coverage. It would not be unreasonable or unaffordable for the City to establish a vision and prescription card plan for its dispatchers based on the same yearly contribution made to the AFSCME H&W plan. Thereby keeping the dispatchers benefits equal to and in line with the AFSCME members and all external comparables.

Looking at the AFSCME Agreement, the City must have anticipated offering similar plans to all other City employees at some point by inserting the language "The Union agrees to consider converting covered employees to a City covered plan for any benefits similar to this plan which the City may offer in the future."

Finding of Fact: I find the following changes to be appropriate and in line with other employees both internally and externally.

1. Increase the life time maximum from 1 million to 1.5 million dollars.
2. Increase individual and family deductibles to \$250 and \$500 respectively.
3. Include a "steering" provision in the health insurance PPO plan whereby in network reimbursement remains at 80% and out of network reimbursement will be at 70%.
4. The City will establish vision and prescription card coverage for all full-time dispatchers, similar to the coverages the AFSCME unit receives through their health and welfare fund.

Suggested Language: Incorporate the above four items into subsection F of Article XVIII.

Issue: Article XVIII, Miscellaneous Financial Provisions

City's Position: The Employer proposes to modify Section D (1) to exclude sick leave from counting as time worked for purposes of overtime.

Union's Position: The Union rejects the Employer's proposal.

Discussion: The City argues that excluding sick leave from counting as time work for purposes of

overtime provides for fiscal responsibility and should generally result in less sick leave usage.

The Union argues that such language is standard in all collective bargaining agreements.

Such language is standard in most public sector and private sector collective bargaining agreements. The Employer failed to provide any evidence to show that sick leave usage is a problem with the dispatchers and such sick leave usage would be reduced by virtue of their proposal.

Finding of Fact: Based on all external and internal comparables, I find no reason to make such a change. The City's proposal is rejected.

Suggested Language: Current Language.

Issue: Article XVIII, Miscellaneous Financial Provisions

Union's Position: In Section I(2)(g)(6), remove the tier relating to "all employee hired on or after July 1, 1996."

City's Position: The City rejects the Union's proposal.

Discussion: The Union argues that this tier in regards to sick leave cash-out was inserted with no consideration given to the Union. The Union further contends that the disparity between the tiers amounts to a substantial amount of money and it should be removed before its detrimental impact is felt.

The Employer contends that this provision was negotiated into the labor agreement several contracts ago by the parties. The City further contends that his language should not be disturbed or modified at this time.

Recognizing the fact that the Union is not in favor of a two tier system and that they feel it was unjustly put into their collective bargaining agreement in the past, I must point out that all other City of Stow bargaining units have a tier in regards to sick leave buy out.

At this point in time, the Union has failed to provide convincing evidence, as to why their bargaining unit should be exempt from the tier.

Finding of Fact: Based on internal comparisons and all testimony presented, the Union's proposal is rejected.

Suggested Language: Current Language.

Issue: Article XVIII, Miscellaneous Financial Provisions

Union's Position: The Union wishes to add Martin Luther King Day as a recognized holiday.

City's Position: The City rejects the Union's proposal.

Discussion: The Union argues that in 2002 Stow does not recognize Martin Luther King Day as a contractual holiday. The Union further argues that the agreement's provision of paid holidays is short when compared with the area's jurisdiction. Adding Martin Luther King, Jr. Day alleviates both of the foregoing deficiencies.

The City contends that the employees currently enjoy a generous holiday provision which is the same total number as other City employees. Moreover, the current benefit is in line with the other jurisdiction.

The Stow dispatchers currently enjoy thirteen (13) paid holidays. This is very much in line with all external comparables and all other like City employees.

Finding of Fact: Based on the external and internal comparison and all evidence presented, I find that the Stow dispatchers are no substandard in the area paid holidays. Subsequently the Union's proposal is rejected.

Issue: Article XVIII, Miscellaneous Financial Provisions

Union's Position: The Union proposes to modify Section Q by increasing uniform allowance by \$50.00 each year and by modifying the method of payment.

City's Position: The City rejects the Union's proposal and offers 3% increase.

Discussion: The Union argues that uniform allowance is commonly used as a vehicle in which money is added to boost a bargaining unit's overall economic package. The union further contends that adding to the current uniform allowance is another way to improve Stow's economic package.

The city submits that the Union's proposal is excessive and counters with a 3% in uniform allowance increase each year. The city also notes that this is the same offer accepted by their AFSCME unit.

In comparison to all external comparables, the City of Stow dispatchers enjoy a very generous uniform allowance. What little testimony was proffered did not indicate that the City's offer was unreasonable.

Finding of Fact: Based on the total wage package and keeping in line with the external comparables, I find that a modest increase in uniform allowance is justified and accept the City's offer.

Suggested Language: Uniform allowance will be increased as follows:

Effective January 1, 2002 - 3% increase

Effective January 1, 2003 - 3% increase

Effective January 1, 2004 - 3% increase

Issue: New Article, "Total Agreement"

City's Position: The City proposes to insert a zipper clause.

Union's Position: The Union rejects the City's proposal.

Discussion: The city proposes a zipper clause arguing that zipper clauses are not unique to public sector contracts. Moreover, the AFSCME negotiations resulted in a contract with a zipper clause.

Although there was very little discussion, the Union opposes the zipper clause proposal as unnecessary.

Finding of Fact: Based on the testimony and evidence presented at the Hearing, I find that the City's proposal to be reasonable.

Suggested Language: New Article

This Agreement represents the entire agreement between the Employer and the Union and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, benefits and practices previously and presently in effect may be modified or discontinued at the sole discretion of the Employer upon the advance notice to the Union of any such modification or discontinuances.



Marc A. Winters, Fact-Finder