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IN FACTFINDING PROCEEDINGS PURSUANT TO
OHIO REVISED CODE SECTION 4117.14

In the Matter of

OHIO PATROLMEN'S BENEVOLENT
SOCIETY

and

THE CITY OF WESTLAKE

SERB CASE NO. 02-MED-03-0172

FACTFINDER'S
REPORT

This Factfinding arises pursuant to Ohio Revised Code Section 4117.14
between OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, the "Union," and
THE CITY OF WESTLAKE, the "City," under which SUSAN GRODY RUBEN was
selected to serve as sole, impartial Factfinder, whose Report is issued
below.

Hearing was held on June 11, 2002 in Westlake, Ohio. The parties were afforded full opportunity for the presentation of positions and evidence. Pre-hearing briefs were timely received from both parties.

APPEARANCES:

On behalf of the Union:

**Jeff Perry, Business Agent, OPBA, 10
Beech Street, Berea, Ohio 44017**

On behalf of the City:

**Robin R. Leasure, Esq., Assistant
Director of Law, City of Westlake, 27216
Hilliard Boulevard, Westlake, Ohio
44145**

Statutory Criteria

Pursuant to Ohio Revised Code Section 4117.14(C)(4)(E), the criteria upon which this Factfinder's Report is based are as follows:

- 1. Past collective bargaining agreements;**
- 2. Comparisons;**
- 3. The interest and welfare of the public and the ability of the employer to finance the settlement;**
- 4. The lawful authority of the employer;**

5. **Any stipulations of the parties; and**
6. **Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.**

The Bargaining Unit

The bargaining unit consists of all full-time Dispatchers, Jailers, Secretaries, and the Animal Control Officer (“ACO”) of the Police Department. There are approximately 18 employees in the bargaining unit.

Previous Collective Bargaining Agreement

The previous Agreement was between the City and the Fraternal Order of Police. Its term was from January 1, 1999 through December 31, 2001. The OPBA became the unit’s exclusive bargaining representative on February 25, 2002.

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ISSUES

1. Scheduled Hours – Article 12.01

Previous Contract

The previous contract provides for 8-hour shifts.

Union Proposal

The Union proposes that by mutual agreement of the City, the Union, and an employee, the regularly scheduled workday may be modified to 10 or 12 consecutive hours in a day. The Union's rationale is that some members of the bargaining unit have worked such modified schedules in the past and/or are doing so currently, and the contract should reflect this reality.

City Proposal

Status quo. The City is opposed to the Union's proposal because it does not give the City the right to change an employee's shift without consent of the employee. The City's contract with the Service Department permits it to alter an employee's schedule without the consent of the employee upon 2 week's notice.

Finding

Given that a current employee regularly works beyond 8 hours, the contract should reflect this. The City, however, should retain the traditional management right to schedule employees. Both these goals are attained with the following language:

12.01 Upon written request of an employee, the employee can be regularly scheduled by the City for a 10- or 12-hour workday, if the City and the Union agree in writing to this modified schedule. Such an employee-requested schedule of over 8 hours in a workday shall not trigger daily overtime as set out in

Article 6.01. In addition, the City has the right to modify an employee's or employees' schedule(s) upon 2 week's written notice to the employee(s), without the consent of the employee and/or the Union. If such City-mandated schedule change results in a workday of over 8 hours per day, daily overtime pursuant to Article 6.01 shall apply.

2. Lunch Periods – Articles 12.04 and 12.05

Previous Contract

The previous contract provides dispatchers and jailers with a ½-hour paid on-call lunch period; the ACO with a ½-hour unpaid off-duty lunch period; and the secretaries with a 1-hour unpaid off-duty lunch period.

Union Proposal

The Union proposes that all employees in the unit will receive a ½-hour paid on-call lunch period. The Union's rationale is that employees sometimes have to interrupt their lunch to handle emergencies.

City Proposal

Status quo. The City is opposed to the Union's proposal because the ACO and secretaries can be guaranteed an off-duty lunch period. Only the dispatchers and jailers are sometimes needed to work during their lunch period.

Finding

Given the City's representation that the ACO and secretaries can be guaranteed an off-duty lunch period, the status quo is adequate.

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3. Duration - Article XXVII

Previous Contract

The previous contract is a 3-year, calendar year contract.

Union Proposal

The Union proposes either a 3-year, calendar year contract; or a 2-year contract from March 1, 2002 - February 28, 2004, with retroactivity to January 1. 80% of units entitled to conciliation have December 31 ending dates or retroactivity to January 1.

City Proposal

The City proposes a 2-year contract from March 1, 2002 - February 28, 2004; this will bring this Union to the same expiration date as the other 5 unions within the City. The City proposes no contractual retroactivity, but notes that the City has a steady history of granting retroactivity.

Finding

The contract will be a 2-year contract from March 1, 2002 - February 28, 2004, with retroactivity to January 1. This will bring the Union to the same expiration date as the other 5 units within the City. Contractual retroactivity will protect the unit's wages, and will reflect the City's practice.

4. Wages - Article XV

Previous Contract

The previous contract provided jailers and the ACO with 3.5% increases in Years 1 and 2, and 4% in Year 3. Each secretary and dispatcher was individually named in the previous contract and given a certain hourly rate in Year 1; all secretaries and dispatchers were given a 3.5% increase in Year 2, and 4% in Year 3.

Union Proposal

The Union proposes a 5-step pay system with hourly rates for each job category listed in a schedule. The top step is after 4 years of service. In the Secretary I schedule, the top step has a 6% increase for January 1, 2002; 5% for January 1, 2003; and 5% for January 1, 2004. The Chief would be permitted to boost an employee's pay by 1 extra step. Shift differential of \$.15/hour would be added to the afternoon and evening shifts. For every shift than an employee must train someone, they will earn 2 overtime hours that they may take in pay or compensatory time. The steps, the Chief's prerogative, the shift differentials, and the training pay will enable the City to better recruit and retain staff. The increased hourly wages and shift differentials will achieve better internal and external parity.

City Proposal

The City proposes 3.5% across-the-board increases for March 2002; and 3.75% for March 2003. These are the wage increases agreed to by the other 5 bargaining units in the City for 2002 and 2003. If the Factfinder makes a 3-year contract, the City proposes 3.5% for March 2004. These increases are sufficient to recruit and retain staff, and are appropriate to achieve internal and external parity. Steps are unnecessary because Article XVI provides longevity pay. Shift differentials are not compelled by the comparables. Training pay is unnecessary, as this is part of employees' regular jobs.

Finding

3.5% across-the-board increase in Year 1 of the contract, with retroactivity to January 1, i.e., January 1, 2002 – February 28, 2003. 3.75% across-the-board increase in Year 2 of the contract, i.e., March 1, 2003 – February 29, 2004. These increases are appropriate to maintain relative external parity, based on the comparables provided. With regard to recruitment and retention, these are among the City's responsibilities, and the City believes these increases are sufficient to meet these responsibilities. A multi-step pay system is an unnecessary departure from the status quo, given the longevity bonuses in Article XVI. Shift differentials are not compelled by the comparables. Training pay is an unnecessary departure from the status quo, as this is part of employees' regular jobs.

5. Holidays – Article XVII

Previous Contract

The previous contract provides 6 paid holidays annually; and 5 personal days (40 hours) annually that can be taken in 1-hour increments. Hours worked on Thanksgiving Day and Christmas Day are compensated at time-and-one-half.

City Proposal

Martin Luther King Day to be added as a 7th paid holiday; personal days to be reduced by ½ day (4 hours) to bring in line with other City employees; hours worked on designated holidays to remain status quo to keep in line with other City employees.

Union Proposal

The Union accepts the City's proposal to add Martin Luther King Day as a 7th paid holiday; personal days to remain status quo; hours worked on any and all contractual holidays to be compensated at time-and-one-half.

Finding

Martin Luther King Day to be added as a 7th paid holiday; personal days to be reduced by ½ day (4 hours) to bring in line with other City employees; hours worked on holidays to remain status quo to keep in line with other City employees.

6. Vacations – Article XVII

Finding

The City has accepted the Union's proposal as written in the Submission Statement of the Union to the Factfinder, with the exception of Article 18.02, which was agreed to at the Factfinding Hearing as follows:

All vacation time shall be taken in time off and not left to accumulate to more than that earned in the previous two (2) years. Upon separation from employment, vacations may be cashed out by an employee.

7. Life Insurance (new)

Union Proposal

The Union proposes the City provide each employee in the unit with term life insurance in the amount of twenty-five thousand (\$25,000) dollars. City police officers and firefighters receive this benefit. As this bargaining unit also is a part of the safety forces, they should be treated the same.

City Proposal

Status quo. The City is opposed to the Union proposal because no City administrative employee receives this benefit. Only police officers and firefighters receive it. Other employees who wish to purchase life insurance can do so by way of payroll deduction.

Finding

Status quo. The safety risks to the members of this unit do not reach the level of police officers or firefighters. The payroll deduction plan provides an adequate means for members of this unit to obtain life insurance.

8. Clothing Allowance - Article XX

Previous Contract

The previous contract provides an annual \$400 clothing allowance, plus 3 City-purchased uniforms upon hire.

Union Proposal

The Union proposes an additional \$100 in each year of the contract; i.e., \$500 in 2002, \$600 in 2003, and \$700 in 2004. Comparables and increasing uniform costs justify the increase.

City Proposal

Status quo. The City rejects the Union's proposal because though these employees currently are in uniform, the City could discontinue this practice at any time. None of the other 5 City Unions received an increase in clothing allowance in the most recent negotiations. Moreover, the City provides 3 uniforms to new hires.

Finding

The comparables provided by the City show the average clothing allowance for ACOs is \$382.50; jailers \$605; dispatchers \$479; and secretaries \$372; with the overall average of the job categories in this bargaining unit of \$485. The comparables provided by the Union show the average 2002 clothing allowance for dispatchers is \$572; and corrections officers \$562.50. Regarding internal parity, the record shows City police officers receive \$900.

Accordingly, an increase in the clothing allowance is appropriate, Article XX shall read:

20.01 Full-time employees required to wear uniforms shall receive annual uniform allowances as follows:

Effective January 1, 2002 - \$500.00

Effective March 1, 2003 - \$600.00

20.02 The City shall purchase three complete initial uniforms for each new employee upon start of employment.

9. Sick Leave - Article XXI

Stipulations

Articles 21.01 and 21.02 – Maximum accumulated sick leave shall be increased from 2000 hours to 2500 hours.

Article 21.07 – “Members of the bargaining unit may, at their option, utilize the twelve (12) weeks of unpaid Family and Medical Leave in lieu of using their accumulated sick time or vacation time for the purpose of maternity leave.”

City Proposal

The City made an economic proposal contained in Appendix B of its Submission to the Factfinder that was contingent upon the Union’s agreement to the City’s entire economic package.

In Article 21.04, the City proposes reference to “Section 167.04 of the Codified Ordinance of the City of Westlake, as adopted on September 3, 1987, Ord. 1987-193,” in place of the previous contract’s reference to “the current Ordinance of the City of Westlake on sick leave in effect at the time of the execution of this Agreement.”

Add “aunt or uncle” to funeral/sick leave in Article 21.05.

Union Proposal

The Union’s proposal for sick leave payout upon separation of employment, Article 21.03, is the same as the City’s proposal on this subject.

The Union proposes to add to Article 21.04: “Each quarter year that an employee does not use any sick time they shall be given \$200. If they call in for one shift or less they shall receive \$100. Funeral days shall not be counted as sick days under this section of the contract.”

Add “aunt, uncle, and grandchildren” to Article 21.05.

Change “Injury Leave” policy in Article 21.06 to “Wage Continuation Plan” as set out in both parties’ Submissions to the Factfinder.

Finding

Article 21.01 – As stipulated.

Article 21.02 – As stipulated.

Article 21.03 – Change current language to sick leave payout language contained in both parties’ Submissions to the Factfinder. Though the City’s proposal on the economic portions of Article XXI was contingent upon Union agreement to the City’s entire economic package, substantial parts of the City’s economic proposals have been accepted by the Factfinder. Accordingly, it is equitable to adopt the new sick leave payout provision.

Article 21.04 – Status quo language on reference to City Ordinance. Attendance bonus in accordance with amounts and language received by City Hall employees: \$100/quarter for 4 hours or less of sick leave used.

Article 21.05 – Add “aunt, uncle and grandchildren.”

Article 21.06 – Change “Injury Leave” policy to “Wage Continuation Plan” as set out in both parties’ Submissions to the Factfinder.

Article 21.07 – As stipulated.

10. Court Time – Article XXIII

Previous Contract

In Article 23.02, court time is compensated for time spent or 2 hours, whichever is greater.

Union Proposal

Increase to 4 hours, as in the police officers’ contract.

City Proposal

Status quo. These employees rarely appear in court.

Finding

Regardless of how often the employees appear in court, it is a time-consuming task when it occurs. Accordingly, it is equitable to increase the minimum to 4 hours, as in the police officers' contract.

11. Drug Testing (new)

Stipulation

In Section 3(A), add the word "indirectly":

Urine specimen collection shall occur at the collection site designated by the Employer in a secure and private room and shall be witnessed indirectly by a person of the same sex as the donor-employee....

12. Overtime - Article VI

Stipulation

In Articles 6.02 and 6.03, change all references of 40 hours of accumulated overtime hours to 50 hours.

13. Disciplinary Procedure - Article XXVI

Stipulation

Amend Article 26.05 in its entirety as follows:

Where the appointing authority seeks as a penalty the imposition of a suspension without pay for more than three (3) days, a demotion or removal from service, notice of such discipline shall be made in writing and served on the employee personally or by registered or certified mail, return receipt requested. In case of a suspension without pay of three (3) days or less, the Chief of Police shall furnish the member of the Department with a written notice of such discipline, served on the employee personally or by certified mail, return receipt requested.

14. Longevity – Article XVII

Stipulation

In Article 16.01, 2nd sentence, change “first pay in December” to first business day in December.

15. Parties

Stipulation

Throughout the contract, change any reference to the “FOP” to the OPBA.

DATED: June 18, 2002


Susan Grody Ruben, Esq.
Factfinder