

Background

Pursuant to the rules promulgated by the State Employment Relations Board, the fact-finder is to take into account the following factors:

1. Past collective bargaining agreements between the parties;
2. Comparison of the issues with those issues involving other public and private employees doing comparable work, with consideration of factors peculiar to the area and classification involved;
3. The public interest and welfare, the ability of the employer to finance and administer the items involved, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the employer;
5. Any stipulations of the parties;
6. Such other factors which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

In the preparation of this report, I have been guided by the factors listed above.

Analysis and Recommendations

As noted above, there are 9 unresolved issues for me to address. My recommendation as to each, together with a brief supporting rationale, is set forth below. I have addressed these issues in the same order in which the pertinent provisions appear in the predecessor agreement.

Article 16 - Vacations

OPBA seeks a modification in Section 8, to address situations in which an employee's vacation is cancelled by the City. An example is the best way to describe the issue. If an employee has 40 hours vacation scheduled for the week of July 1, normally he or she would be off work that week, and would receive 40 hours pay. Under the predecessor agreement, if an employee is "refused vacation for the convenience of the City" the employee is paid for the vacation time plus hours worked, so that if the City decided to require the employee to work the week of July 1, he or she would receive 80 hours pay for that week, assuming the employee worked 40 hours. The 80 hours pay would be based on the 40 hours of lost vacation, plus the 40 hours of actual work.

OPBA contends that this is inadequate compensation, since it fails to take account of the possibility that the employee may lose a deposit or incur a cancellation fee, such as for airline tickets or hotel reservations. Under its proposal the employee in the example cited above in effect would be paid for 100 hours (for the vacation and the time worked) and would also be entitled to reschedule the vacation week. In effect, OPBA's proposal would change what currently might be called double time, to triple time and a half.

In my view, some adjustment in this area is in order. I would not go as far as the OPBA proposal, however, but would adopt what might be called a double time and a half provision. Individual situations differ, and the importance of having a vacation at a particular time varies depending on whether the

employee plans to paint the house or to go to the Olympics. Accordingly, I would give the employee the option of rescheduling the vacation or receiving the additional payment. Thus if the City cancels an employee's vacation, I would provide the employee with the normal rate of pay for the time worked (straight time or overtime as would otherwise apply under the collective bargaining agreement), plus compensation for the vacation at 1.5 times the normal rate if he or she chooses not to reschedule the vacation time. The employee would have the option of rescheduling the vacation for a different time, at the normal vacation rate of pay. Specifically, I recommend that Article 16 Section 8 be modified to read as follows:

If an employee's scheduled vacation is cancelled by the City, the employee shall be paid for the time worked at the same rate of pay as would have been received if no vacation time were involved. In addition, at the employee's option, the employee may reschedule the vacation for another time period, to be paid at the employee's regular rate for vacation time, or may forego the vacation time and receive compensation at the rate of 1.5 times the employee's regular rate.

Article 19 - Longevity Pay

OPBA seeks to modify the current longevity provision essentially to provide longevity at the same rate as firefighters in Niles receive. If I correctly understand the proposal, OPBA would apply the firefighters' longevity rate to the police salary scale, so that the actual amounts of longevity pay would not be identical for police and firefighters, although the longevity factor would be the same.

In many jurisdictions, there has historically been an effort to maintain "comparability" between police and firefighters. This does not appear to have been the case in Niles. I have compared the compensation and hours provisions in the most recent collective bargaining agreements for police and firefighters in Niles, and it is fair to say that the compensation systems are totally different. I do not perceive a sufficient basis for grafting one, but only one, aspect of the firefighters' compensation into the police agreement. Further, Article 42 Section 2 of the predecessor agreement would have provided a basis for the police officers to seek modification of that agreement during its term if they believed that the firefighters' agreement provided for more liberal compensation, but as far as I am aware, no request for negotiations under this section was made. I recommend no change from the predecessor agreement with respect to longevity pay.

Article 23 - Service Related Injury

At the hearing, proposals in this regard were counted as two issues, but I will treat them all in this section. The City proposed to delete Article 23 Sections 1,2 and 6 from the agreement, and to modify Section 12. OPBA also proposed a modification to Section 12.

The City's proposal to eliminate the three sections would reduce the benefits currently available to a patrolman injured in the line of duty. In my view this is not an area to try to save money. Police work can be dangerous. It can also call for quick decisions. The citizenry is best served if an officer carries out his or her duties fearlessly, unaffected by fears about the economic consequences in the event the officer is injured. Similarly, when a patrolman is called upon to make a quick decision, such as a use of force

decision, the public is better served if concern about the economic effect on the officer's family in case the officer is injured does not become a factor in the process.

I therefore recommend against deletion of Article 23 Sections 1, 2, and 6.

The parties' proposals in Section 12 do not seem to me radically different, and my recommendation is something of an amalgam of the two proposals. Specifically, I recommend that Article 23 Section 12 be amended to read as follows:

In circumstances where an employee is eligible for light duty under conditions set forth by his/her physician or the City physician, and with the approval of the Safety Director (which shall not be unreasonably withheld), the employee shall be authorized to work alternate duty assignments on his bid shift or any shift needed, so long as assignments are on a consistent basis. The employee shall not be required to perform duties on day turn one day, afternoon the next, midnight the following day or any other similar combination. In the event the opinions of the two physicians conflict, a third physician will be selected by the other two, and the opinion of the third physician shall be binding. The costs incurred for examination by the City physician and the third physician shall be borne by the City.

Article 24 - Wages

The City proposes wage increases of 3 percent each year of the agreement. OPBA proposes 5.5 percent increases annually. The predecessor agreement included wage increases amounting to 5.5 percent annually.

The parties provided hundreds of pages of financial and comparability data. Attempting to summarize all this information in a few sentences necessarily omits many of the details. Nonetheless, I will provide the briefest sketch of the factors that lead to the wage recommendation set forth below.

The City is in reasonably good financial health. However, its condition is not quite as rosy as it was when the predecessor agreement was entered into. For example, its annual interest income has decreased by over a million dollars since 2000 as interest rates have declined. State funding also appears somewhat problematical.

In comparison with the other cities in Trumbull County (there are only three cities including Niles), Niles is above the average for starting rate, and slightly below average for top level pay. In comparison with the 9 cities in Trumbull, Mahoning and Portage Counties, Niles is almost exactly average for starting rate, and over \$3000 below average for top level. A few caveats are in order however. As I understand the SERB data from which these statistics were compiled, most of the other jurisdictions include wage increases effective in 2003, while the comparison figure for Niles is based on 2002 wages, since the 2003 wages have yet to be determined. Further, the data includes the City of Youngstown, which because of its much larger population might be regarded as a special case. Further, Youngstown and 3 other cities included in the SERB data currently have officers on layoff, unlike Niles.

The above brief summary does not do justice to the amount of work the parties invested in preparation for this case. But it does suggest a conclusion which will probably surprise no one: that the proper result is somewhere between the figure suggested by the City and the figure suggested by OPBA. There is, unfortunately, no formula for determining the proper wage increase, and I admit that my recommendation is not the product of any scientific process. Nonetheless, having considered the evidence and arguments offered by both parties, I believe that the percentage wage increases I recommend fairly meet the needs of both parties in this case. I would note that the increases for 2003 are to be retroactive to the beginning of the year.

I recommend the following percentage increases in wages:

Effective January 1, 2003	-	3.0 percent
Effective January 1, 2004	-	3.25 percent
Effective January 1, 2005	-	4.0 percent

Article 25 Section 1 - Hospitalization

The City proposes that employees be required to pay 10 percent of the monthly medical insurance premium. Based on current premiums, the employee's share under the City proposal would be about \$75 per month, but it would rise with anticipated increases in medical costs. OPBA proposes no change in medical coverage.

Currently there are two medical plans for City employees. One is called a PPO plan, although there are some additional features to it, and the other is a traditional medical insurance plan. The City is self-funded, with insurance for catastrophic medical situations.

Employees at present do not pay any of the premium costs under either plan, but must pay part of the cost of prescription drugs (unless they obtain generic drugs by mail order). The traditional plan is an 80/20 plan, so that the employee must also pay some of the medical costs.

Over the past several decades, the trend has certainly been to managed care health coverage. Traditional medical plans are more and more uncommon, and it may well be that they will disappear entirely before long. Already the City has difficulty in even finding a medical insurance carrier willing to bid on its traditional coverage. Certainly the optimal solution for these parties would be for the City and the OPBA to jointly design a managed care program that would apply to all the bargaining unit employees. Perhaps medical coverage should be addressed by a committee including representatives of the City and the various bargaining units. As fact-finder, however, I have the responsibility to recommend something more concrete than simply directing the parties to revisit the issue. If I had the expertise to design a managed care program for the parties, I would propose such a plan, but I lack such competence.

Thus the best I can do is to make a modest recommendation, which I believe points the parties (and the employees) in the right direction. My recommendation provides an incentive for employees to migrate from the traditional coverage to the PPO coverage. This results in a cost saving to the City, and fosters the recognition that at some point in the not too distant future, all the employees are likely to be subject to a form of managed care. Thus those employees who choose to remain in the more expensive traditional plan would be required to absorb part of the cost involved. In recognition of the fact that family coverage

is substantially more expensive, I would require a greater payment from those who receive this greater benefit. Specifically, I recommend that Article 25 Section 1 be modified to read as follows:

The Employer agrees to maintain in full force and effect all existing coverages for health, hospitalization insurance, optical and drug prescription coverage and benefits, including major medical, presently in effect, the Employer assuming the payment of the premiums in full for employees who elect PPO coverage. Employees who elect traditional coverage will be required to pay \$40 per month (\$20 per month for single coverage) commencing January 1, 2004, and \$50 per month (\$25 per month for single coverage) commencing January 1, 2005.

Article 25 Section 2 - Life Insurance

Although the parties have not officially agreed on this, both parties envision that the life insurance benefit will be increased from the current \$15,000 to \$20,000. I shall make a recommendation in accord with the expectations of the parties. Specifically, I recommend that the last sentence of Article 25 Section 2 be amended to read as follows:

The Employer agrees to pay the full premium for a life insurance policy for bargaining unit members in the amount of \$20,000.

Article 36 Section 7 (New Work Assignment Provision)

At the hearing, the OPBA's proposals for new Sections 7 and 8 in Article 36 were counted as one issue, but I will address them separately.

The primary impact of OPBA's proposed Section 7 would be to make seniority the determining factor in bid situations for work assignments and special duty assignments. A brief history is necessary to understand the proposal. The parties signed a side agreement that within 90 days after execution of the January 1, 2000-December 31, 2002 collective bargaining agreement, they would negotiate on two issues, one of which was selection for special duty assignments, and that if agreement could not be reached, the issue would be decided in arbitration. The issue did reach arbitration, and Arbitrator Thomas Hewitt issued an award dated August 28, 2001, listing the factors to be taken into account in choosing applicants for special duty assignments. He went on to say that if the applicants were relatively equal on the basis of these factors, seniority would prevail for the selection.

At the hearing before me, both parties acknowledged that they regard the Hewitt award as binding on them.

After the Hewitt award, a dispute arose regarding assignments of detectives and C.O.P.S. officers. The case was arbitrated before Arbitrator Philip W. Parkinson. Arbitrator Parkinson defined the issue as "whether Patrolmen have a contractual right to selection for the special duty assignments of Detective and C.O.P.S. Officer." He regarded that issue as turning on "whether the parties have an established past practice of filling Detective and C.O.P.S. Officer special duty assignments with Patrolmen." He decided that if detectives and C.O.P.S. officers were special duty assignments, the Hewitt criteria would apply.

He concluded that they were special duty assignments and directed the City to fill these assignments with patrol officers applying the Hewitt criteria, rather than using ranking officers for such assignments.

The City challenged the Parkinson decision, and the case is now pending in the Court of Common Pleas.

Without the benefit of the Court's decision, it is impossible for me to determine whether applying even the Hewitt criteria to "all work assignments" rather than just "special duty assignments" is a large extension or a small one. In either case, however, I would not effectively overrule Arbitrator Hewitt's decision, which uses seniority as a tie breaker, by establishing seniority as the sole factor in bid situations. In my view it is more appropriate to make seniority the determining factor only where the other factors are relatively equal.

Accordingly, I recommend against incorporating the proposed new section in the collective bargaining agreement.

Article 36 Section 8 (New Provision regarding Dispatch Duties)

OPBA proposes a new provision that would regulate the use of patrolmen as dispatchers. Specifically, the proposal would preclude the City from using a patrolman to replace a dispatcher unless the City was unable to fill the dispatch vacancy. In that event, the City would be required to call in from a list of patrolmen who have volunteered for dispatch duties. If no such patrolman were available, the City could utilize an on-duty patrolman as dispatcher, but would be obligated to call out an additional patrolman as a replacement, regardless of whether the minimum manning requirement (Article 37 Section 2) would otherwise be impacted.

There is much to be said for avoiding the use of patrolmen as dispatchers. Since patrolmen receive a higher rate of pay, it is more efficient for the City to use only dispatchers for dispatch work. In addition, someone who does dispatch work all the time may well do a better job than a patrolman who is rusty on this function. One can certainly sympathize with patrolmen who are fearful of making a mistake when working only occasionally on dispatch duties, and who would also seek to have greater coverage on the streets.

But the OPBA proposal does not seem to me the proper solution. First, it has an impact beyond the current bargaining unit. How many dispatchers there ought to be, and when they should be called in on overtime is more appropriately a matter for bargaining within the dispatcher unit. Second, the OPBA proposal effectively requires more than the contractual minimum manning in some situations but not in others. If the current minimum manning provision is inadequate, the problem should be addressed directly by increasing the minimum manning, but not indirectly by prohibiting use of an on-duty patrolman as dispatcher where the City is above the minimum requirement. (Of course, where the on-duty complement of officers is already at the minimum, even under the predecessor agreement the City would have to call out an additional patrolman if it used a patrolman for dispatch duty.)

I recognize that the use of patrolmen as dispatchers is not a desirable situation. It may well be that the City's recent hire of an additional part time dispatcher will alleviate the problem. In any event, the OPBA proposal does not, in my view, provide the right solution to the problem. Accordingly I recommend against incorporating the proposed new section in the collective bargaining agreement.

Article 44 (New) - Secondary Employment

OPBA proposes a new Article 44 that would provide that an employee could engage in secondary employment if it did "not actually interfere with the employee's duties with the Employer."

This proposal apparently resulted from the case of a Niles officer who wanted to accept employment as a part time police chief in another jurisdiction. Initially, the City refused to permit the officer to do so, and a grievance was filed based in part on Article 42 (Past Practice/Prevailing Rights). Ultimately the parties resolved the issue, and the officer was permitted to accept the position with the other department.

In my view, the fact that the parties were able to resolve the dispute under the terms of the predecessor agreement suggests that no modification is necessary. Moreover, even if the proposed new article had been in effect at the time, the same disagreement might well have arisen, the only difference being that the focus of the dispute would shift from what the practice had been regarding secondary employment, to whether the external position would interfere with the officer's duties as a member of the Niles Police Department. Thus it seems to me doubtful that the proposed language would achieve its objective of reducing the number of possible disputes about secondary employment.

I recommend that the OPBA's proposed new Article 44 not be incorporated in the new agreement.

As noted above, in addition to these specific recommendations, I recommend inclusion of all tentative agreements reached by the parties. I further recommend that all other provisions of the predecessor agreement be retained unchanged from that agreement

Issued April 28, 2003

Matthew M Franchewitz

Certificate of Service

I certify that the above Report and Recommendations was served upon both of the above-named parties, and upon the State Employment Relations Board, in accord with SERB rules, on April 28, 2003.

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