



STATE EMPLOYMENT  
RELATIONS BOARD

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IN THE MATTER  
OF  
FACTFINDING  
BETWEEN THE  
CITY OF LONDON, OHIO  
AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Issue: Factfinding  
Date of Hearing: August 28, 2003  
Location: City of London Administrative Offices  
Case No: 03-MED-04-0502; 0503; and 0504  
Date of Award: September 25, 2003

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REPORT AND RECOMMENDATIONS

Michael A. Paolucci  
Arbitrator

### Administration

By letter dated August 7, 2003, from Dale A. Zimmer, the Administrator with the Ohio Bureau of Mediation, the undersigned was informed of his designation to serve as Factfinding in a factfinding procedure between the Parties. On August 28, 2003, a hearing went forward in which the Parties presented testimony and documentary evidence in support of positions taken. The record was closed at the end of the hearing and the matter is now ready for a factfinding report with recommendations.

### Factual Background

The city is located just west of Columbus, Ohio and is a relatively rural community of approximately 9,000 citizens. Although rural, it has a certain number of citizens who commute to Columbus, Ohio. The Union represents three (3) different groups of employees: nine (9) Patrol Officers (Case No. 03-MED-04-0502), four (4) Sergeants and Supervisors (Case No. 03-MED-04-0503), and four (4) Dispatchers (Case No. 03-MED-04-0504).

The City focused on its financial situation in support of its claim that economic benefits should be relatively small. It argued that there is a small increase of population, and what benefit that might normally follow such an increase has been offset by the fact that the City has been unable to impose a reasonable income tax. The City has a one percent (1%) income tax and has made several attempts at increasing that rate, however unsuccessfully. It showed that it has taken political action in attempting to increase this rate, but that the opponents have won each time.

The City argued that the general fund has been decreasing in recent years and that it is impossible to predict how available funds will be in fiscal year 2004. Moreover, it claimed that

no other city employee has received a wage increase in 2003. While the Union makes some concession with regard to the unpredictability of the City's funds, it counters that the City always claims in negotiations that it has no ability to pay, when it always ends up remaining rather stable. It contends that the only reason that the other city employees have not received a wage increase is due solely to the fact that the Union is the lead negotiator; that whatever raises the police receive, the other employees will automatically receive; and that such has been the case for some time in the City.

There are nine (9) members in the patrol officers' bargaining unit; four (4) sergeants; and four (4) dispatchers. Of the Patrol Officers, only one (1) has less than six (6) years of seniority, the remaining having from six (6) to fifteen (15) years. In the Dispatcher's bargaining unit, the four (4) employees have five (5) to twenty eight (28) years; and in the Sergeant's bargaining unit the seniority ranges from fourteen (14) to thirty one (31) years.

The City showed that the health insurance premiums are currently predicted to increase on January 1, 2004. In response, the City has required all other City employees to pay an additional 5% of the health insurance premium. The City thus claimed that it was facing serious economic pressures, while the Union argued that this is always their claim which never comes to pass. The City used other cities that are rural, county seats in and around the entire state; the Union used nearby cities, in contiguous counties, that are of a comparable size to this city.

#### Issues Submitted

The following five (5) issues were submitted to the undersigned for recommendations:

1. Article 11 – Discipline (Dispatchers only);
2. Article 19 – Wages (All bargaining units);
3. Article 21 – Grievance Procedure (Dispatchers);
4. Article 24 – Insurance (Dispatchers);
5. Article 26 – Insurance (Patrol Officers & Sergeants).

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

\* \* \*

- (K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:
- (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 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.

The issues will be addressed giving consideration to all of the required factors.

#### Contentions of the Parties

#### **1. and 3. Article 11.6 and 21.5 – Discipline (Dispatchers only)**

The City proposes changing the language so that the option of appealing disciplinary matters to the civil service is eliminated. With the elimination, the Dispatchers would only have arbitration as the tribunal in which to appeal disciplinary decisions.

The Union proposes the *status quo*.

### Union Contentions

The Union argues that the current method is adequate and provides more flexibility in giving the employees a choice in which to take their appeals. It argues that there is no reason to change and asks that the current language be kept unchanged.

### City Contentions

The City pointed out that the other two (2) police bargaining units have already agreed to the change; it argued that arbitration is a fair method in which to resolve disciplinary disputes; that the civil service option has rarely been used; and it contends that the consistency between the bargaining units is important and justifies making the change.

### Recommendation

The most powerful comparables are those that are made internally; and of the internal comparables, those made to the same type of employees, or to the same union are even more persuasive. Because arbitration is a fair, stable, and sufficient method in which to resolve disputes, it must be recommended that the Agreement be changed. Such a change will make the Dispatchers consistent with the other two (2) police bargaining units and will have little effect on the Dispatchers.

**2. Article 19 – Wages (All bargaining units)**

Both Parties made proposals for changes to the wages section for each different bargaining unit. It is important to note that most of the bargaining unit members, in each contract, are in the last step of the wage scale.

The Union proposed a five percent (5%) across the board wage increase in each year of a three (3) year agreement. This would include six (6) steps in the wage scale: Steps A through F for Sergeants, with the top step being reached after the fourth (4<sup>th</sup>) year; Steps A through G for patrol officers, with the top step being reached after the fifth (5<sup>th</sup>) year; and Steps A through F for Dispatchers, with the top step being reached after the fifth (5<sup>th</sup>) year. As for the number of steps, the Union's proposal includes increasing the number of steps for the Dispatchers from five (5), ending with Step E, to six (6) ending with Step F, as noted. This proposal would result in steps A through E remaining in the first year, with Step F being added in the second year with the attendant 5% wage increase. The wage increase for the second and third year would thus be the 5% increase, referenced above.

The Union also proposed including a new Longevity Pay benefit for each bargaining unit at differing rates for years 6-10 (\$250/year); 11-15 (\$500/year); 16-20 (\$750/year); 21-25 (\$1,000/year); and 25+ (\$1,250/year). It asks that this be paid over the entire year by dividing the amount due by the 2080 hours worked per year, and then being added to the hourly wage.

The City proposes a wage increase in each year of a three (3) year contract for the differing bargaining units as follows:

Patrol officers – 2% each year;  
Sergeants - 3.1%, 2% and 2%;  
Dispatchers - 2% in each year.

In addition, the City proposes a wage freeze for every step of the wage scale except the top step for each bargaining unit. It proposes the higher first year increase for Sergeants because the lower steps of the Sergeants wage scale are actually lower than the top levels of the Patrol Officers. If a current Police Officer moves into the Sergeant position, there is the potential that he could suffer a loss of pay. To prevent this, the City also proposes eliminating the first three (3) steps of the wage scale and re-label them.

The City proposes adding a Step H, I and J for Patrol Officers (G is the current top wage rate. In addition it proposes freezing all lower wage rates. All Patrol Officers but one (8 of 9) are in the top wage rate, and the remaining Officer is in Step C. For Dispatchers, the current top step is Step E, and the City proposes creating new steps F, G and H. All employees in the Dispatcher bargaining unit are at the top step. For Sergeants, all are at the top step.

The City opposes any Longevity pay and argues that such, if granted, would result in wage increases of between 2.9% and 4% in addition to the wage increases already demanded by the bargaining unit.

### Union Contentions

The Union argues that the comparables used by the City are, simply put, wrong. It argues that the City went around the entire state in search of low populated, rural communities, that also are county seats. While it concedes that this fits the description of the City, it argues that it fails to consider that the City and county are growing due to their closeness to Columbus; that the City is growing in population; that the City has a significant amount of new building occurring; and it is poised to benefit from the influx of business and population not only from Franklin County, but also from Dayton and Montgomery County on its west side. To counter the City's

comparables, the Union used municipalities that are within two (2) counties of the city and that otherwise match the City and region's makeup.

The Union not only doubts the City's claim of an inability to pay; it argues that it failed to prove that claim. Moreover, it underscored the fact that the City only has a 1% income tax rate when a 1.5% rate is more common. It argues that with this small of a tax base, it would be expected that the City leadership would attempt to correct the low tax rate. Instead, it argued, the City has done little; has never asked for union membership assistance in convincing the voters that a levy needs to be passed; and should not be rewarded in this negotiation for failing to take action that would alleviate any of its budgetary problems.

The Union points out that the comparables, and the City's own history, justifies at least a 4% wage increase. Not only has the City typically paid 4%, but the Union claimed that it has done so while continually claiming that it has an inability to pay. It argues that the claim was wrong before and it is wrong now.

As evidence of the City's growth, the Union pointed out that the revenues have increased from 1999, at \$2,000,000, to 2002, at \$2,400,000. It argues that this represents a 17% increase in the income tax revenues. It argues that the City's own budget shows that the City expects to spend 4% as a wage increase. It contends that the Union's proposal will cost the City only \$33,000 per year, a small sum when the General Fund balance of \$534,000 is considered. It argues that the City's burden is to prove an inability to pay and it asserts that it failed to prove its case. Whatever the City's claims are with regard to its financial condition, the Union argues that the weaknesses are at best short term and should not be found as valid justification for giving this bargaining unit a small wage increase.

## City Contentions

The City denies that it has ever before made an inability to pay argument at factfinding. Indeed, it claims that the mayor is sympathetic to the police and their needs. It argues that in his position as mayor he often acknowledges the inability to pay the officers a higher wage due to the City's economic condition and its inability to do what it wants. It contends that the Union members have done nothing to help correct the low tax base during voting periods when the levy has been at issue.

The City argues that it is a rural community and it used comparables for Ohio cities that have approximately nine thousand (9,000) in population. Contrary to this reasoning, it points out that the Union uses comparables from much bigger cities, all of which have much bigger police levies. It argues that its proposals are based not only on the lack of funding, but also on the increased costs associated with the expected increase in health insurance premiums. It asserts that it does not have enough money to pay for both a wage increase and an increase in the health insurance premiums. For proof of the City's bad finances, it points to the fact that no other employees have received merit pay increases. It contends that it can only afford a modest increase in the wage increase, but even that is contingent on it receiving relief in health insurance premiums.

The City contends that it can not afford any longevity costs; that its one percent (1%) tax base is insufficient to pay for much in the way of new costs; that its budget is in decline; that it is receiving less money from the state; and that it has less revenues. The City pointed to its budget and the increasing amount being claimed by the police for its costs - up from 40% to 41% not including the wage increases and health premium increases expected with this Agreement. It

argued that its true economic position, as reflected on a cash based budget, shows that it is under considerable financial strain with no relief expected for 2004.

The City argues that all of the foregoing justifies its roughly 2% increase, with a freeze of the lower levels of the steps of the wage progression. Since eight (8) of the nine (9) patrol officers in that bargaining unit are at the top step, then it contends that its proposal will have little affect on most of the Union members. Moreover, it argues that during bargaining there was little resistance to the idea of freezing the lower levels of the wage rates and contends that such shows that the Union has little real opposition to that City proposal.

The City contends that the Union's proposal are simply more than it can afford and asks that the Union's longevity proposal be completely rejected. It argues that it is nothing more than an attempt to get a wage increase by other means and, since the City finances are bad, its proposal are out of line. It contends that its proposals are more reasonable; take the City's poor economic condition into account; and allow the City to save money in the future by freezing wages for new hires only.

### Recommendation

It is recommended that the following changes be made:

A 3%; 3.5%, and 3.5% wage increase be made for all employees except Sergeants. Sergeants should receive 3.5% for every year.

The Union's proposal on the increase in the number of steps for Dispatchers is recommended.

The City's proposal on freezing wage rates for lower steps is recommended except for the step occupied by the Patrol Officer in Step C. In order to treat the bargaining unit the same, the steps below his wage rate are recommended frozen, but not the Step that he is at when a contract is signed.

The Longevity Pay is not recommended to be included.

The recommendations made are based on several factors. While the City's claims on its poor financial health were influential, they were not sufficient to reduce the wage rate to the level proposed by the City. Its financial condition appears to have more threat of poor condition than to have yet reached a critical stage. Indeed, there are promising financial indicators that contradict the City's claims. The trends for revenues are increasing; the population is rising; and the suburbs are closing in. All of which tend to support a positive financial future for the City. Notwithstanding the positive indicators, the City was able to show that the immediate financial condition has significant issues that need to be handled over the short run. These issues were considered in making the above recommendations.

Also influential were the Union's comparables. Although they were from larger cities, they were from cities in the vicinity which similarly benefit from the population growth of Dayton and Columbus. The City's comparables, although similar in their size, rural character, and county seat situation, have little else in common with London. Although London is currently rural, it is becoming less so. Although it has a small population, it is doubted that such is stable. London is only semi-rural and is becoming more of a suburban area than a rural county-seat. Therefore, it must be found that the Union's comparables were more persuasive.

Based on this analysis, the City showed that financial pressure is continuing, but that the comparables all have higher wage raises. In addition, the Parties have a history of giving larger

wage raises. It is against this backdrop that the aforementioned raises are recommended. Also, in order to make the pay rate for Sergeants more logical by making their lower rates higher than the patrol officer's high rates, the Sergeant should be given a slightly higher wage raise in the first year. As it pertains to the Dispatchers, the Union convincingly showed that the fewer wage steps for them was an oversight and should be corrected. Therefore, it is recommended that their steps match those of the Patrol Officers.

The City's proposal on freezing the lower wage rates is recommended except that no current employees should be affected. The recommendation is that the lower unoccupied wage rates should be frozen, but that any that are occupied, or that will be occupied by a current employee during the Agreement's life, should not be frozen. The rest should be. It is expected that the likely result of this recommendation will be a reduced ability on the part of the City to hire good employees in the future. Freezing already low wages does nothing but harm the City as a place of employment. Even though this result follows logically from the City's proposal, it is felt that such is more the City's problem than the Union. If the City wants to hamper its own ability to attract qualified candidates, then that is its prerogative. Based on the City's financial condition, it is felt that it can balance the benefits with the costs and the recommendation is made.

The City's financial condition makes the implementation of a new benefit wrong. As a result, Longevity Pay is not recommended.

**4. and 5. Article 24 – Insurance (Dispatchers); and  
Article 26 – Insurance (Patrol Officers & Sergeants).**

The City proposes increasing the employee contribution from 5% to 10% and it proposes requiring the employees to share any increase in the premium above the 10% in the first year of the contract on a 50/50 split.

The City also proposes removing the benefit of a “co-insurance” fund. The fund is used to pay for out-of-pocket expenses that are above the insurance benefits.

The Union proposes making the Health Insurance Premium for Dispatchers at a 90/10% split between the City and the employees. It proposes the *status quo* for the remaining health insurance benefits.

City Contentions

The City argues that this benefit is the best available on the market – it is a “Cadillac” plan as far as the City is concerned. As of 1/1/03, the City incurred an increase of nearly 30% in the insurance premium. The City was informed to expect another increase of the same percentage on 1/1/04. It contends that if this trend continues, then the cost over the term of the entire contract will be extreme. Indeed, it contends that if the trend continues, the cost will be higher than the increase in wages. The City argues that the Parties met through the auspices of the Health Insurance Committee in an attempt to resolve the issues. It interpreted the Union’s position as a “see you in negotiations” attitude. The City complains that it needs relief in this area and that every entreaty it has made to the Union has been rejected. Moreover, it argues that it attempted to get the bargaining units to agree to a cafeteria plan, but that it was completely rejected.

The City argued that the bargaining units were intractable; that they demand the current health insurance plan; but that they refuse to share any of the costs if the premiums rise as fast as predicted. It argues that, if nothing else, its proposal would motivate the Insurance Committee to help try to avoid the increase by looking at different health plans. Since the Union was totally unwilling to help the City reduce costs, it argues that its proposal is a reasonable alternative to either cure the problem, or motivate the Union to change its position. The City recognizes the step the Union has taken by agreeing to the 10%, but argues that it needs more.

### Union Contentions

The Union first points out that the Parties have had one (1) arbitration and two (2) Grievances over health insurance benefits in the past 1-2 years. It argues that in each circumstance, the City has eroded the benefits, and that as a result the health plan is not a “Cadillac” plan anymore. The Union advocate asserted that since he was never involved in any mid-term bargaining over health insurance, then the City must not have been serious about changes since he has the sole authority to represent the Union in negotiations. Since the more accurate statement is that the Parties met only six (6) months before bargaining was set to begin, then it is inaccurate to describe the Union’s position as refusing to bargain, but as a reasonable request that the Parties just wait until negotiations started. Moreover, it asserts that the parties mutually agreed to wait until negotiations to handle the issue – it was not a one sided refusal as described by the City.

The Union presented documents that purport to show that the cost of health insurance has actually gone down between 2001 (\$109,000) and 2002 (\$105,000). It gave comparables that show that the Union members’ contribution is right where it should be. It contends that the

Union's proposal recognizes that the City is incurring unexpected costs, but asserts that any additional amounts as proposed by the City would essentially reduce any wage increase to a negative amount. It argues that the Union's proposal, an essential doubling of the employee contributions, is sufficient, is more reasonable, and is better even under the current contract rate.

### Recommendation

It is recommended that the Health Care Premium benefit be changed so that employees contribute 10% on all three Agreements. In addition, it is recommended that the third year of the Agreement contain a Health Care re-opener.

The City is correct in its assessment of the health care situation. Costs are rising at extremely high rates; the higher costs make budgeting impossible; and the City will have a difficult time creating a budget if the costs for health care continue to increase at 30% per year. The problem with health care benefits are troublesome and extremely difficult to resolve. Neither party is at fault, yet both are suffering. Although achieving a balance is a reasonable goal, it is not achievable when this one item on a budget increases at rates approaching 30% per year.

When the ability to correct the problem is measured between these two (2) parties, it is felt that the City is the most able to effect change. It has more wherewithal to increase its revenues, to negotiate with Health Care providers, and to have input into the state as to how to correct the problem. Moreover, these historically underpaid employees are less able to absorb the increased costs that would be at risk if the City's proposal were adopted. They are low paid and as a result each increase in the health care cost disproportionately results in a negative economic hardship on the employees.

These factors all justify an increase for the employees, but only a modest one in line with that proposed by the Union. However, in the event that the health care premiums increase another 30% in the third year, it is reasonable for the City to have a way out for negotiating a change in that year. If the costs increase at this dramatic a rate, then it is reasonable to expect that some other change, perhaps not yet explored, will have to occur. For this reason, the change proposed by the Union is recommended for the entire health care language, but the third (3<sup>rd</sup>) year is recommended to have a health care reopener.

September 25, 2003  
Cincinnati, Ohio



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Michael A. Paolucci