

2004 SEP -9 A 11: 01

STATE EMPLOYMENT RELATIONS BOARD

03-MED-10-1063

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION)	FACT-FINDING REPORT
)	
and)	STANLEY B. WIENER
)	FACT-FINDER
)	
CITY OF EAST CLEVELAND)	SEPTEMBER <u>7</u> , 2004

A hearing was held on August 4, 2004 at the East Cleveland City Hall, 14340 Euclid Avenue, East Cleveland, Ohio 44112.

Representing the Ohio Patrolmen's Benevolent Association ("Union") was MARK J. VOLCHECK, Esq. Appearing on behalf of the Union was JOHN BECHTEL, OPBA Director/Negotiator.

Representing the City of East Cleveland ("City") was JON M. DILENO, Esq. Appearing on behalf of the City were PATRICIA LANE, Chief of Police; BRIAN THOMPSON, Finance Director; and RONDA CURTIS, Assistant Law Director.

I. BACKGROUND – PAST NEGOTIATIONS

The previous contract was for three (3) years expiring December 31, 2003. Negotiations began in late 2003.

In March, 2004, the parties signed a new healthcare agreement. Under this agreement, those who wanted to continue to receive the benefits of the previous contract were required to pay Sixty and 98/100 Dollars (\$60.98) per month for single coverage and One Hundred Forty-seven and 50/100 Dollars (\$147.50) per month for family coverage; compared to Ten and 00/100 Dollars (\$10.00) per month for single and Twenty and 00/100 Dollars (\$20.00) per month for family. Two (2) other plans were made available at less cost, but with less benefits.

An attempt was made at mediation but to no avail.

II. ISSUES AT IMPASSE

A. Residency

B. Financial issues

1. Duties
2. Court time/call-in time
3. Overtime
4. Wages

III. POSITIONS, FINDINGS AND RECOMMENDATIONS

As a FACT-FINDER, I am required to take into consideration the factors set forth in Ohio Revised Code, Section 4117.14 (G) 7(a) to 7(f). I have done this for all of the issues discussed below.

A. RESIDENCY

The City has proposed a change to Article 33, Section 33.5 of the contract. This provision now reads: “No employees as a condition of employment shall be required to be a resident of the City of East Cleveland.”

The proposed change would require employees to become residents of the City within six (6) months of ratification or hire.

CITY: The advantages of residential employees are increased income tax revenue, increased spending in the neighborhoods and enhanced property values. Non-Union and non-safety employees are required to be residents.

UNION: Approximately fifty per cent (50%) of employees are not residents. Residency requirements would limit the pool of applicants for employment taking into consideration the low rate of pay. Moving would create a financial hardship; and off duty officers would face potential problems living in the City because of its small area and high crime rate.

In the past few years this issue has been raised by the City many times at Fact-finding and conciliation hearings with OPBA, FOP and IAFF.

All neutrals have rejected the City’s position.

FINDINGS: Based upon the past collective bargaining agreements; the Fact-finding and conciliation precedents and the Union’s arguments regarding safety, hardship and the limitations of possible applicants, I support the Union position.

RECOMMENDATION:

That Article 33, Section 33.5 remain unchanged.

B. FINANCIAL ISSUES:

BACKGROUND:

The City has been in fiscal emergency for approximately sixteen (16) years. It is generally acknowledged as the poorest city in Cuyahoga County. It has double digit unemployment sixteen per cent (16%), declining revenues and like all communities in Ohio it is receiving less state assistance.

The City has reduced its workforce by ten per cent (10%); reduced some of its employees to a thirty-two (32) hour work week; and seriously reduced services. In May of this year the directors and managers took a two per cent (2%) wage cut.

They managed to end 2003 with a small cash reserve (two and one-half per cent (2.5%) of its budget). In order to do so the City was forced to maintain a negative fund balance in other accounts.

A Five Hundred Thousand and 00/100 Dollar (\$500,000.00) decline in revenue is estimated for 2004.

Needless to say the Union has suffered along with the City. The patrolmen are paid between twenty-five per cent (25%) to thirty per cent (30%) below all other Cuyahoga County police departments.

1. DUTIES

The Union proposes an addition to the contract: "Except in cases of emergency patrolmen shall not be required to work correction officer or dispatch duties. Patrolmen required to perform said duties shall be paid an additional four (4) hours compensatory time per shift."

UNION: Police officers have been required to work entire shifts as correction officers and dispatchers. This involves work and knowledge of tasks not related to everyday duties, resulting in increased stress.

CITY: Historically, patrolmen have performed dispatching and correction officer duties. In many cases they are performing these duties because the OPBA Agreement required that dispatch and correction officers be laid off before any patrol officers. Under the financial conditions that currently exist, the members of this unit must be able to handle all police work.

FINDINGS: Because of the city's financial condition I find it logical that the employees do whatever is necessary to handle all of the duties which fall within its jurisdiction.

RECOMMENDATION: The Union proposal should not be included in the contract.

2. COURT TIME/CALL-IN TIME

Article 21, Section 21.3 reads as follows:

“An employee in an off-duty status who is ordered to report for work and reports as requested, shall be paid a minimum of four (4) hours or the actual time worked, whichever is greater.”

Article 21, Section 21.4 states:

“An employee in an off-duty status who must appear in court in reference to his official duties shall be paid a minimum of four (4) hours or the actual time spent, whichever is greater.”

The City proposes to reduce the call-in and court time minimum from four (4) hours to two (2) hours.

CITY: The fiscal crises certainly justify the above proposal. Addressing these overtime costs is crucial.

The reported hours for court time through July 25, 2004 totaled One Thousand Three Hundred Thirty-four and 50/100 (1,334.50) hours.

The court time proposal is especially important. An officer attending court for a short time presently earns four (4) hour at time-and-a-half.

There are a number of jurisdictions that pay a minimum less than four (4) hours for court time and call-in time. The City needs this relief.

UNION: The Union strongly opposes reducing the court time and call-in minimum pay from four (4) to two (2) hours. The four (4) hour minimum has been a longstanding benefit that helps to make up for the low wage rate. The vast majority of jurisdictions in Cuyahoga County have a minimum in excess of two (2) hours.

FINDINGS: At this time of crisis I find the City's proposal reasonable.

RECOMMENDATION: That Sections 21.3 and 21.4 of Article 21 should be amended to read as follows:

Section 21.3 "An employee in an off-duty status who is ordered to report for work and reports as requested, shall be paid a minimum of two (2) hours or the actual time worked, whichever is greater."

Section 21.4 "An employee in an off-duty status who must appear in court in reference to his official duties shall be paid a minimum of two (2) hours or the actual time spent, whichever is greater."

3. OVERTIME:

The Union proposes that the overtime threshold shall be reduced from eighty-six (86) hours to eighty (80) hours in a fourteen (14) day period. It proposes that Article 21, Sections 21.1 and 21.5 be amended as follows:

Section 21.1 “Overtime shall be defined as any work in excess of ~~eighty-six (86)~~ **eighty (80)** hours in any fourteen (14) day work period. For purposes of computing overtime, vacation days, the eleven (11) regular holidays, one (1) convenience day, and compensatory time off plus any of the three (3) festive days shall be counted as hours worked.”

Section 21.5 “All employees when performing overtime work will be entitled to receive pay at the rate of one and one-half (1-1/2) times their regular hourly rate figured to include longevity; SWAT pay; and education differential for all hours actually worked in excess of ~~eighty-six (86)~~ **eighty (80)** hours in any fourteen (14) day work period according to the Fair Labor Standards Act.”

UNION: The low wages support the proposal. Most jurisdictions pay overtime on the basis of hours worked over forty (40) in a seven (7) day period, or eighty (80) in a fourteen (14) day period. The eighty-six (86) hour provision is rare.

This proposal is an important step in adjusting the wage disparity between East Cleveland and the rest of Cuyahoga County.

CITY: The City cannot afford the added cost of overtime. Reduction of overtime is a must at this time. In 2003 the Police Department paid Two Hundred Twenty-five Thousand and 00/100 Dollars (\$225,000.00) in overtime. The 2004 budget estimated overtime at Fifty Thousand and 00/100 Dollars (\$50,000.00). This amount has already been exceeded in the first six months of the year.

FINDINGS: This is not the time to change the overtime formula.

RECOMMENDATION: That Article 21, Section 21.1 not be changed.

4. WAGES:

CITY'S PROPOSAL:

Effective 1-1-04 - Wage Freeze

Effective 1-1-05 - Two percent (2%) wage increase

Effective 1-1-06 - Two per cent (2%) wage increase

UNION'S PROPOSAL:

Effective 1-1-04 - Three per cent (3%) wage increase

Effective 1-1-05 - Four per cent (4%) wage increase

Effective 1-1-06 - Four per cent (4%) wage increase

CITY: There is no money available for wage increases in 2004. The 2004 budget assumed a wage freeze. The City acknowledges that the patrol officers of East Cleveland are the lowest paid officers in Cuyahoga County. The last three (3) year contract which included annual increases of four per cent (4%) made the financial condition more desperate.

According to Mr. Brian Thompson, the City Financial Director, a three per cent (3%) increase would cost the City Three Hundred Thousand and 00/100 Dollars (\$300,000).

UNION: The current financial problems are little different from the problems complained of in past contract negotiations. The last contract contains annual increases of four per cent (4%). In March, 2004 the Union took a serious reduction in real wages as a result of the new healthcare plan. Without the increases requested by the Union, its members will fall even further behind all police groups in the county.

FINDINGS: Since the fact-finding hearing, I have received two (2) Conciliation Reports involving the City. One (1) with the Fraternal Order of Police decided on August 11, 2004; and the other involving the East Cleveland Fire Fighters (IAFF Local 500) decided on August 25, 2004.

Both Conciliators rejected the three per cent (3%) wage increase request for 2004. Both ordered a wage freeze for 2004, and two per cent (2%) wage increases for the years 2005 and 2006. The decisions were based primarily on the same financial conditions as described in this Report. I believe, however, that insufficient attention has been paid to the substantial increase in healthcare contributions made by the Union members.

RECOMMENDATIONS:

(A.) Payment of a one-time lump sum signing bonus of Seven Hundred and 00/100 Dollars (\$700.00) (not to be rolled into the base pay) to each member of the bargaining unit, to be paid no later than thirty (30) days after the execution of this contract.

(B.) No increase in wages for the year 2004.

(C.) Effective January 1, 2005, a wage increase of two per cent (2%).

(D.) Effective January 1, 2006, a wage increase of two per cent (2%).

Respectfully submitted,

DATED: September 7, 2004


STANLEY B. WIENER
FACT-FINDER