

HAND DELIVERED

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDING PROCEEDINGS**

**REPORT & RECOMMENDATION
OF THE FACTFINDER**

AS ISSUED

IN THE MATTER OF:

City of Willoughby Hills)	
(Employer))	
-and-)	
Ohio Patrolmen's Benevolent Association)	SERB Case No.: 03-MED-10-1174/1175
(Union))	
)	
)	
)	

STATE EMPLOYMENT
RELATIONS BOARD
2004 NOV 30 P 2:49

APPEARANCES:

On Behalf of the Employer:

James Budzik	Attorney
Kenneth A. Lorenz	Mayor
Brian Condra	Finance Director
Chris Collins	Chief of Police

On Behalf of the Union:

Randy Weltman	Attorney
Dave Broadwater	Negotiating Committee
Mike Planisek	Negotiating Committee
Jim Vitale	Negotiating Committee

**GREGORY JAMES VAN PELT
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Submission

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained until December 31, 2003. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on a number of occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested the Factfinder to attempt mediation of unresolved issues prior to holding an evidentiary hearing, and a mediation session was accordingly convened on October 1, 2002 at the Willoughby Hills City Hall in Willoughby Hills, Ohio. Prior to hearing, pursuant to OAC 4117-9-05(F), *et seq.* the Parties submitted to the Factfinder written statements of their respective positions. Mediation resulted in the withdrawal or settlement of a number issues at impasse between the Parties, but failed to resolve the remaining issues below. Accordingly, an evidentiary hearing was held on October 12, 2004, at which the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed as of the date of hearing.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

1. **Article X – Layoff & Recall***
2. **Article XIV – Military Leave***
3. **Article XVI – Overtime Pay***
4. **Article XVII – Personal Days***
5. **Article XVIII – Uniform Allowance***
6. **Article XX – Holidays**
7. **Article XXI – Sick Leave***
8. **Article XIX – Vacations***
9. **Article XXXXIII – Longevity**
10. **Article XXV – Insurance**
11. **Article XXVI – Salary Schedule**
12. **Article XXVII – Educational Pay**
13. **Article XXXVII – Family Medical Leave***
14. **Full – timer’s Preference***
15. **Substance Testing ***

*Resolved in mediation, by mutual agreement of the Parties.

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq.*, specifically:

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(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;
- 4117-9-05(K)(3)** The interests 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;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND AND STATUTORY CONSIDERATIONS

Located in western Lake County, conterminous with the suburban communities of eastern Cuyahoga County, the City of Willoughby Hills (City) sits on the cusp between established suburbs and developing exurbs. The City comprises slightly over ten square miles and some 8,500 residents. Within its borders are the North Chagrin Reservation and the Manakiki Golf Course, both owned and operated by the Cleveland Metroparks System. While these Parks limit the amount of available developable land, they contribute considerably to the ambience that places the mean home value in the City in excess of \$200,000.

The developing nature of Willoughby Hills renders problematic the selection of appropriate peer communities in order to determine market compensation. The City urges comparison of Willoughby Hills' financial situation and Police Patrol compensation to that of more rural and often less affluent Lake County jurisdictions such as Willowick, Madison Township or Mentor-on-the-Lake. Not surprisingly, the Union urges comparison to contiguous but sometimes larger and more densely suburban Cuyahoga and Lake County municipalities such as Euclid, Highland Heights or Mayfield.

The problem of peer communities with which to compare Willoughby Hills was addressed in a 1989 Factfinding Report by Arbitrator Harry Graham, who determined that the City was within the "Hillcrest Area", and included Willoughby Hills as a suburb more comparable to Highland Heights, Chagrin Falls, Willoughby, Richmond Heights, Mayfield Village, Gates Mills and others, while rejecting Chardon, Painesville, Madison Township and similarly less suburban comparables.

In the fifteen years since Dr. Graham's determination that Willoughby Hills was a suburb comparable to other Hillcrest Area communities, the City has become increasingly

suburban. Consequently, the Factfinder leans heavily toward the contiguous jurisdictions presented by the Union as peer communities. However, OAC 4117-9-05(K)(2) mandates comparison of compensation afforded members of the unit at impasse with those of peer employees; but it also advises attention to “factors peculiar to the area and classification involved”, an exhortation that would seem to apprehend that often directly comparable communities are non-existent. Rather, it would seem, the intent of the section is to urge the Factfinder to determine the range of compensation available within a labor market, and, when possible, particularly in situations such as that presented by Willoughby Hills, to assess means and averages as more indicative of area market compensation than attempt to find several directly comparable communities.

The City has no police or safety levy, and funds police operations from the General Fund. Its primary revenue source is the 1.5% city income tax, in place since 1976; under which Willoughby Hills provides a 1% credit. Efforts to increase the income tax to the 2% rate of many surrounding communities have failed twice in recent years, and additional attempts to place increases on the ballot are not underway. The City’s primary employers are predominantly retail businesses and professional practices, with some light industry and limited manufacturing. Income from the 1% income tax \$2,925,000. in 2003, and is projected to be \$2,940,000. in 2004.

As noted above, much of the developable land in Willoughby Hills has been occupied. However, a number of developments are planned in the near future or are currently underway. Real property taxes for the year ended December 31, 2003 were based on an assessed value of \$286 million, and generated \$475,000; projected 2004 real estate taxes are projected by the City to \$570,000.

Citing provisions in OAC 4117-9-05(K)(3), the City argues that its financial situation is dire, and that it cannot pay the compensation proposed by the Union. While the State Auditor recommends that municipalities maintain current cash balances sufficient to fund operations for thirty days, Willoughby Hills ended 2003 with only fourteen days of operating capital, and at the time of hearing had only sufficient cash to fund its operations for slightly over two days, according to its financial officer. In order to pay its bills, the City maintains that it was forced to utilize funds from other sources, available only on a onetime basis. Moreover, it has been unable to fill a Lieutenant's position left vacant through attrition, and utilized the almost \$100,000 dollar compensation to fund other police operations. Its 2004 budget assumes a holding year, with no wage increases, and even under that projection the City expects to end the year with only five to ten days of available cash.

Some \$780,000, or 15% of Willoughby Hills' revenue is derived from the State's Local Government Revenue Sharing Fund, which the City asserts will be cut substantially when the current one cent additional sales tax provision sunsets in June of 2005. Moreover, the City asserts that lower short term interest rates, combined with its use of savings and reallocation of money to the General Fund in order to meet current operating expenses has resulted in a decrease in interest earnings from a high of over \$140,000 in 2000 only \$13,000 in 2003.

In addition to consideration of the market wage rate for comparable communities, and the Employer's ability to pay compensation proposed by the bargaining unit, the Factfinder is statutorily required to consider the interests of the citizens of Willoughby Hills. In doing so, he notes that much of the policing of the municipality is done by part-time officers, who perform services such as traffic and drug interdiction that exceed the time constraints

imposed by daily police functions on the City's fulltime patrolmen. Among the issues resolved in mediation was a provision that would allow the layoff of a bargaining unit member only after two part-time officers had been laid off. In Willoughby Hills, any reduction in police force strength necessitated by the City's choice of layoff would lessen the protections enjoyed by the community, and the revenue derived from police operations, and must consequently be considered inimical the best interests of the public.

The following findings of fact and recommendations attempt to balance these competing considerations.¹

FINDINGS AND RECOMMENDATIONS

1. Article XX – Holidays

OPBA Position

The Union argues that comparable jurisdictions enjoy both more holidays and more holidays paid at premium rates when worked than do officers in Willoughby Hills. Accordingly, it proposes the addition of Martin Luther King Day to increase the total paid holidays to twelve; and that time and one-half be paid officers required to work on any of the recognized holidays.

City Position

The City rejects both the Union's proposal to increase paid holidays, as well as the proposal to add Martin Luther King Day to the contractually recognized holidays.

Findings & Recommendation

Examination of the comparable jurisdictions submitted by the Union reveals that, with the exception of much larger Euclid, the number of paid holidays enjoyed by

¹ The Factfinder takes notice that the CPI-U for the period September 2003-2004 is 2.5%. See <http://www.bls.gov/news.release/cpi.t01.htm>

Willoughby Hills officers are substantially the same as those of surrounding communities. And although bargaining unit members receive premium pay for working only eight holidays – admittedly at the lower end of contiguous jurisdictions – the City’s fiscal situation would militate against the recommendation of additional paid holidays in the present contract.

Accordingly, it is recommended that present contract language be retained.

**2. Article XXXXIII – Longevity
OPBA Position**

The Union argues that longevity is an important element in retaining qualified police officers, and accordingly proposes the addition of three longevity steps, extending the benefit to officers having thirty years of service with the department.

City Position

The Employer argues that the current longevity benefits begin at four years of service, and extend to 24 years, providing additional compensation of \$2,500 annually after that time. The current benefit is uniform among City employees, and should be retained.

Findings & Recommendation

While the longevity benefit provided Willoughby’s police officers with ten years of experience is somewhat less than the average of conterminous communities, it is not sufficiently below the average as to require the upper-level adjustment the Union proposes. Nor was there a demonstration that the City is having difficulty retaining its most experienced officers. Given the current limitations on Willoughby Hills’ finances, it would seem of greater benefit to all members of the bargaining unit to leave adjustment of the longevity benefit to another contract, and to instead concentrate compensation increases in the area of base wages at this time. Consequently, current contract provisions for longevity are recommended.

3. Article XXV – Insurances

OPBA Position

The Union argues that bargaining unit members have been asked to assume more than a fair share of the City's rising health care costs, in support of which it points to comparable communities in which police officers pay a less than the premium contribution made by the City's police officers. The Union also asserts that under the current Agreement, the City may unilaterally modify benefit levels, having an adverse impact on employees.

Based on these assertions, the OPBA proposes to lock in the present level of premium contribution, as well as requiring the City to provide benefits "equal" to those existing under the predecessor Agreement, and to incorporate by reference the provisions of current health coverage.

The Union also contends that the Life Insurance coverage provided by the City is below the comparable benefit afforded police officers in peer communities, and asks that the coverage be increased to \$50,000.

City Position

The City proposes language that would require bargaining unit members to pay a flat 10% of premium costs for both single and family coverage. The meaning of "comparable" coverage was arbitrated between the Parties, with the Arbitrator concurring with the Employer that "comparable" benefits did not require "equal" coverage; consequently, the City rejects the Union's proposal to include language mandating such equal coverage. Additionally, the City proposes that, should it be faced with an annual increase in excess of 20% of premium cost, it be allowed to unilaterally modify benefit levels.

The Employer maintains that present Life Insurance benefits are adequate, and urges that the Union's proposal to increase coverage to \$50,000 be rejected.

Findings & Recommendation

The dramatic increase in health care costs, and the corresponding rise in premiums, indeed render both public and private sector employers unable to project and therefore budget for insurance coverage. In a City as financially precarious as is Willoughby Hills, the potential for financial crisis is particularly acute, and it is therefore not unreasonable to provide some protection against precipitous increases. Accordingly, the City's request that bargaining unit members pay 10% of total premium costs is recommended.

However, increased health care costs are potentially detrimental not only to employers, but to employees who also make a contribution. Discussed during negotiations was a plan to limit annual increases to the premiums paid by bargaining unit members to 10%, based on the 2004 rate of \$32.53 for single coverage and \$91.05 for families; that is, in 2005, employees will pay a maximum of \$35.78/\$100.10; in 2006: \$39.27/\$110.11. This cap is a reasonable protection against catastrophic premium increases to OPBA members, and is also recommended, despite the Factfinder's reluctance to advance settlement proposals.

The City also proposes language to allow it to unilaterally reduce benefit levels should its insurance premiums increase more than 20% in any coverage year. While such flexibility in coverage would seem reasonable in the face of unmanageable insurance increase, the Union should have input into both the plan and provider under consideration. Therefore, language requiring that any reduction in benefit levels in the face of increases in excess of 20% annually be referred to the Labor Management Committee provided for in Article XI of the Agreement. As a practical matter, the requirement that "equal" coverage be provided is unworkable, and is not recommended here:

25.01 *The Employer shall pay ninety percent (90%) of all insurance premiums (family or single plan) and the employee shall pay ten percent (10%) of such premium through payroll deduction, not to exceed an annual increase of ten percent (10%) of the*

previous annual premium contribution of each employee. The Employer shall be able to change insurance carriers or self-insure providing that the benefits are comparable to existing benefits and premium costs do not exceed 20% from one renewal year to another. In the event premium increases exceed 20% from one renewal year to another, the City may modify benefit levels at its discretion, following consultation with the Labor Management Committee.

4. Article XXVI – Salary Schedule OPBA Position

The Union contends that compensation afforded members of the Willoughby Hills Police Department falls below the average of comparable jurisdictions. In order to remedy this disparity, the OPBA proposes base wage increases of 4% in each of the three contract years. In addition, the Union proposes proficiency pay for various duties amounting to \$500/\$750/\$1,000 in each of the three years of the Agreement. Moreover, the Union proposes a shift differential for work in the afternoon and midnight shifts; and additional compensation to officers for field training.

City Position

For the reasons discussed above, the Employer argues that it is unable to pay the compensation sought by the Union, which it characterizes as “excessive”. Therefore, it rejects the Union’s proposals for proficiency pay, shift differential and training officer stipend, and offers a 1% increase to the current base wage rate, beginning on July 1, 2004, combined with a one-time bonus of \$500; an additional 2% increase in 2005; and another 2% in the final contract year.

Findings & Recommendation

The evidence adduced at hearing indicates that the City’s financial position is indeed tenuous, and that it is presently unable to pay the compensation package proposed by the Union. However, although not disastrously below comparable levels, it is also true that the Union’s total compensation is somewhat below that of the market rate for police officers in

the area. In order to balance these two legitimate, but certainly competing considerations, it would seem advisable to invest those resources available to the City into the base wage rates paid bargaining unit members, and to accordingly not recommend the proficiency, shift differential and training pay proposed by the Union.

And while the City is currently suffering from a cash shortage, its expectations in the future are positive. The economy as a whole seems to be recovering, however sluggishly. Real property tax revenue in Willoughby Hills is increasing, and new developments promise both increased property and income tax revenue. Accordingly, an increase in base wage rate of 2% limited to the last six months of 2004 - representing slightly less than the rate of consumer inflation – should afford the City some opportunity to recover, while not dropping bargaining unit members precipitously behind their colleagues in the eastern suburban market. An increase of 3% in 2005 - only marginally more than the rate of inflation – will allow the Employer to plan for the increase, while bringing its police officers into parity with officers in comparable communities. A further increase of 4% in the final year of the Agreement will continue to elevate bargaining unit members toward average market compensation, while leaving the City time to take advantage of increased property and income tax revenue generated by new development. Moreover, delaying an upward wage adjustment to the final contract year will permit the City to again attempt income tax increases bringing it into alignment with the 2% rates in surrounding communities.

Therefore, the following increases to the salary schedule of Section 26.01 are recommended:

- 2% increase over base wage rate, effective July 1, 2004*
- 3% increase over base wage rate, effective January 1, 2005*
- 4% increase over base wage rate, effective January 1, 2006*

5. Article XXVII – Educational Pay
OPBA Position

The Union maintains that the educational pay benefit is substandard when compared to comparable jurisdictions, and in accordance with that assertion, proposes that officers possessing Associate degrees be paid an additional 5% of their base wage rate; that those with Bachelor's degrees in law enforcement related fields be paid an additional 7%; and that bargaining unit members with Master's degrees be paid an additional 9%.

City Position

The City argues that many of its police officers have received degrees, and that it cannot afford to eliminate the current maximum educational pay amounts, or to pay the percentage of base wage sought by the Union.

Findings & Recommendation

Many of the contiguous communities cited by the Union provide no additional compensation for various levels of education. Moreover, given the City's current financial situation, there is no demonstration of compelling need to raise the educational benefit level afforded the City's police officers, or to impose upon the City the substantial percentage increases sought by the Union at this time. Current contract language is consequently recommended.

SUMMARY

FINDINGS AND RECOMMENDATIONS

In consideration of the factors enumerated in OAC 4117-9-05(K), *et seq*; the testimony and evidence proffered by the Parties at hearing; and the issues at impasse resolved through mediation, the Factfinder recommends the following:

- 1 Article XX – Holidays**
Current Contract Language Recommended.
- 2 Article XXXXIII – Longevity**
Current Contract Language Recommended
- 3 Article XXV – Insurances**
City proposal, with provision for:
90%/10% premium contribution; up to 10% annual increase over 2004 premium rate;
Change of plan to comparable benefit level permitted;
Modification of benefit level with over 20% annual increase, in consultation with
Labor Management Committee;
Current term life insurance provision.
- 4 Article XXVI – Salary Schedule**
2% increase over base wage rate, effective July 1, 2004
3% increase over base wage rate, effective January 1, 2005
4% increase over base wage rate, effective January 1, 2006
- 5 Article XXVII – Educational Pay**
Current Contract Language Recommended

Gregory James Van Pelt

Respectfully submitted this 26th day of October, 2004
At Shaker Heights, Cuyahoga County, Ohio