

STATE EMPLOYMENT
RELATIONS BOARD

2004 DEC -6 A 11: 50

STATE OF OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN:

CITY OF FAIRLAWN (Employer)

and

OHIO PATROLMAN'S BENEVOLENT ASSOCIATION (Union)

CASE NO: 2004-MED-03-0339

FACT-FINDING REPORT OF THOMAS R. SKULINA, FACT-FINDER

HEARING

An initial mediation meeting took place at the City of Fairlawn Government Center, Fairlawn, Ohio, on September 30, 2004. This was followed with a fact-finding hearing on November 5, 2004. The City's advocate was Kevin Campbell, Esquire. Also representing the City was Edward J. Riegler, Law Director. The Union was represented by Matthew B. Baker, Esquire.

Both parties submitted position statements prior to September 30, 2004.

It was stipulated that the fact-finder's report be mailed to SERB on December 2, 2004. Copies are to be faxed that day to Mr. Campbell at 330/725-8806, Mr. Riegler at 330/668-9544 and to Mr. Baker at 614/791-3246. Copies shall also be mailed to both advocates and Mr. Riegler that day.

BARGAINING UNIT

The bargaining unit consists of eight (8) full time Communication Specialists.

ISSUE NUMBER 1: SECTION 27.1 - WAGES

The first issue was over wages. A three percent raise was offered by the Employer. It included two steps. One for less than four years and a step increase for employees with four or more years. It proposed that the pay raise would begin January 1, 2004 and that another three percent raise would begin January 1, 2005. Wage re-opener and benefit insurance issues only would be taken up at a re-opener for the third year of this contract.

The Union also began with a three percent raise, however, it proposed six wage steps, i.e., 0-1 Year, 1-2 Years, 2-3 Years, 3-4 Years, 4-8 Years and over 8 Years. It argued that this proposal mirrors that of the police and fire departments of the Employer.

The Employer contended that it is not bound to offer the same wage structure to the Dispatchers as it extends to police and fire. In any event, it argued that the step program should evolve over time and subsequent bargained agreements.

The Employer apparently enjoys good economic health so there is no reason to review its financial strength. Neither party offered evidence to make city fiscal attainments an issue.

Both parties submitted evidence of comparable communities' pay scales and step programs.

A study of fifteen communities' wage increases indicate that three percent is a common denominator for wage increases for dispatchers in comparable communities.

A review of step comparisons indicate a range between two to seven.

Steps encourage longevity and reward the more experienced members of the work force.

The city's agreement that a step program should evolve over a series of negotiations rather than in one large increase has merit.

In the present unit, one person has fifteen years, one eight years, one six years, one four years, one three years, two two years and one one year.

I shall find for four steps for this agreement.

The City has requested that this three year contract be left open on the issues of wages and health benefits. It reasons that it is attempting to synchronize the dispatchers with the police and fire units. Health care is a continuing and growing economic hurdle and consistency for all municipal workers is appropriate and necessary in obtaining contracts with care providers. Thus, I shall find the wage increases for four steps at three percent for 2004 and 2005. The year 2006 shall be a re-opener for the wage issue. The difference between each of the last three steps shall be four and one-half percent for the year 2004. In year 2005, each pay grade increases three percent within the step.

1. FINDING: WAGES

Section 27.1. **WAGES.** Effective January 1, 2004, all employees shall be paid an annual salary as follows:

Less than two years experience - \$32,326.98.

More than two and less than four years experience - \$33,781.69.

More than four and less than eight years experience - \$35,301.87.

More than eight years experience - \$36,890.45.

Section 27.2. **WAGES.** Effective January 1, 2005, all employees shall be paid an annual salary as follows:

Less than two years experience - \$33,296.79

More than two and less than four years experience - \$34,795.14.

More than four and less than eight years experience - \$36,360.93.

More than eight years experience - \$37,997.16.

Section 27.3. **RE-OPENER.** There will be a re-opener for the purpose of wages and health insurance only for the third year of this Agreement.

ISSUE NO. 2: NEW ADDITION TO ARTICLE 27 - SHIFT DIFFERENTIAL

The Union referred to five communities that utilize shift differential payments for communication specialists. It argues that shift differential affords a motive for employees with more seniority to bid for the more lucrative times of later in the work day.

The comparables are not as close as were those for the three percent wage increase and the increase in steps from two to four. Many of the five cities with shift differentials are not comparable and in a different county.

In view of the gains for the more senior dispatchers in the wage scale found for them, I do not find that this provision be added.

2. FINDING: SHIFT DIFFERENTIAL

No change in wage provisions to include a shift differential provision.

ISSUE NO. 3: ADDITION TO WAGE - ARTICLE 27 - TRAINER PAY

The Union seeks additional compensation when a unit member acts in the capacity of a training officer for a new or remedial employee.

The Union argues that a trainer is exposed to liability. The City counters that sovereign immunity laws protect this government function.

Custom and practice indicates that communication specialists with more seniority have shared their expertise with new hires.

The comparable example of six communities submitted by the Union are not comparable. I do not find that there should be a trainer pay provision.

3. FINDING: TRAINER PAY

There shall not be an addition to Article 27 for Trainer Pay.

ISSUE NUMBER 4: ADDITION TO ARTICLE 27 -
S.T.E.P. PROGRAM PAY

The City has a program for its police officers wherein they work additional hours for a premium hourly rate to assist in a program for traffic offenses. It has generated more income for the City, however, as evidence adduced by the Union, more work is created for the dispatchers. Each arrest involves more work.

The City argues that when there are lapses in the work day, the workers may read, watch TV or get on the internet. It does not feel that it should pay when the communication specialists are doing their job.

The union members want some portion of the funds generated by this police program and argue that the police certainly get a twenty dollar plus benefit while they do not receive anything for extra duties.

There are no comparables. Since the members are allowed to entertain themselves in lapse periods, by reading, watching television, or using the internet, without any pay loss, the City's point is well taken. I do not find that this provision should be added.

4. FINDING: S.T.E.P. PROGRAM PAY

There shall be no addition to Article 27 for S.T.E.P. program pay.

5. ISSUE NUMBER 5: ARTICLE 5 - MANAGEMENT RIGHTS

The City proposes to restate its management rights. The Union objected and indicated that the present language is sufficient.

There is an understandable desire on the part of the City to get all their CBA'S as uniform as possible.

This language is easier to review since it separates the various clauses in more readable form.

Since there are no substantial changes, I shall recommend that the new City version be utilized.

5. FINDING: MANAGEMENT RIGHTS

Section 5.1. Management Rights. Not by way of limitation of the following paragraph, but to only indicate the type of matters or rights which belong to and are inherent to the Employer, the Employer retains the right to:

- A. Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the Employer, standards of services, its overall budget, utilization of technology, and organizational structure.
- B. Determine the qualifications and basis for selection, retention and promotion of its employees.
- C. Determine the number of persons required to be employed, laid off or discharged.
- D. Hire, direct, supervise, evaluate and manage the employees covered by this Agreement.
- E. Suspend, discipline, demote or discharge the employees covered by this Agreement.
- F. Determine the starting and quitting time and the number of hours to be worked by the employees covered by this Agreement.
- G. Determine the work assignments of employees covered by this Agreement.
- H. Determine the work standards and the quality and quantity of work to be produced.
- I. Establish, modify, consolidate, layoff or abolish jobs.
- J. Reorganize, discontinue, reduce or enlarge the number of employees providing services under this Agreement.
- K. Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted.
- L. Implement any and all rules, regulations, policies and procedures.

- M. Determine the type of equipment used and the sequence of work processes.
- N. Establish, expand, transfer and/or consolidate work processes and facilities.
- O. Terminate or eliminate all or any part of its work or facilities; consolidate, merge or otherwise transfer any or all of its work or facilities with or to any other department, division, municipality or entity; or change in any respect the legal status, management or responsibility of such work or facilities.

Section 5.2. Waiver. The Union agrees that all of the functions, rights, powers, responsibilities and authority of the Employer in regard to the operation of its work and business, and the direction of its work force, which have not been specifically modified by the express and specific written provisions of this Agreement, are reserved to the sole and exclusive management and discretion of the Employer, and the Employer is not required to bargain on its exercise of its management rights.

Section 5.3. Authority of Chief or designee. The Chief of Police, or his designee, shall have the authority to make and implement decisions and exercise management rights in the operation of the Police Department.

ISSUE NUMBER 6: ARTICLE 29 - INSURANCES

Considerable time was expended by both parties relative to this issue. Comparables were introduced by both parties to help substantiate their position.

The fact that health insurance cost is increasing on a steady basis is a given.

The City has also indicated that it is aiming to get the full city employment members to arrive at a new insurance agreement that also share more of the expenses.

The Union wishes to retain the same language with the same monetary obligations.

It did ask for an increase in Section 29.2 from \$75.00 to \$150.00 per year for vision care expenses.

It also sought vision corrective laser eye surgery one time per eye.

The City's proposal increases the monthly obligation of the members of the unit, but does amend Section 29.2 to make the increase from \$75.00 to \$150.00. It does object to the laser surgery issue.

The laser surgery payment is not a generally accepted provision in what I can glean from the evidence at the hearing. I shall not incorporate that.

The City asks for a re-opener on the Insurance issue after two years in order to get a chance for uniformity on this issue with all its bargaining units.

It also seeks a provision for a (Section 29.4) Health Care Committee. The Union has the same proposal but adds a non-waiver provision.

Though I recognize that the costs of insurance are increased for the City, I believe that the work of the health review committee should be given some time. Furthermore, I shall recommend a re-opener on Insurance for the third year of this CBA.

6. FINDING: INSURANCES

The changes for Article 29 shall be limited.

Section 29.2. The City shall reimburse employees up to one hundred fifty dollars (\$150.00) per year on a "use it or lose it" basis for qualified vision care expenses and/or for qualified un-reimbursed dental care expenses. The employee shall provide the city with a receipt as proof of the cost of eye care services and un-reimbursed dental care expenses.

Section 29.3. The City shall provide life insurance for the bargaining unit members. The amount of life insurance shall be \$50,000.00. Employees may purchase at their own cost additional life insurance, if such option is offered by the insurance carrier.

Section 29.4. Health Care Review Committee. The bargaining unit agrees to participate in a City-wide Health Care Review Committee. The bargaining unit shall designate one representative to be a member of the City Health Care Review Committee. Said committee shall consist of the following individuals and/or representatives: one member designated by each bargaining unit in the City, each department head or their designee, the Mayor or his designee, a representative from City Council or designee, the Finance Director or designee, and the City's insurance agent/consultant. The purpose of the committee is to review health care proposals which provide comparable coverage under the current City plan but at a reduced cost. Upon review, the committee shall make a recommendation to the Mayor and Council by ranking its selection from most favorable to least favorable.

Section 29.5. Re-opener. There will be a re-opener for the purpose of wages and health insurance only for the third year of this Agreement.

ISSUE NUMBER 7: NEW ARTICLE - TRAUMATIC INCIDENT

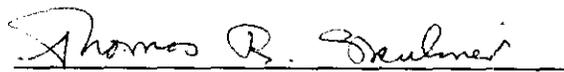
The Union seeks a new article to cover traumatic incidents that result in death. Testimony indicated that this occurrence where a Communication Specialist gets involved with a death in the line of duty and becomes traumatized is a rare one.

A call could, for example, involve the death of a police officer in line of duty. That officer would probably be known by the dispatcher.

There are no comparables for this type of provision. I shall recommend against it.

FINDING: TRAUMATIC INCIDENT

There shall be no provision for a "Traumatic Incident" clause in the Agreement.


THOMAS R. SKULINA
Fact-Finder

DATE ISSUED: December 2, 2004