

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

**FACT-FINDING PROCEEDING
04-MED-06-0658**

2004 NOV 10 A 11: 38

**OHIO PATROLMEN'S BENEVOLENT :
ASSOCIATION :**

Employee Organization :

and :

**CITY OF TROTWOOD :
Employer :**

**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER
ISSUED: NOV 8, 2004**

Appearances:

Joseph M. Hegedus
Ohio Patrolmen's Benevolent Association
555 Metro Place N., Suite 100
Dublin, OH 43017
(For the Union)

Robert E. Portune, Esq.
Gottschlich & Portune, LLP
201 East 6th St.
Dayton, OH 45402
(For the Employer)

REPORT AND RECOMMENDATIONS

I. Background

The City of Trotwood is located in Montgomery County. It is approximately 70 miles from the State Capital of Ohio and 60 miles north of Cincinnati. The City is a political subdivision in the State of Ohio incorporated in 1971. It is a home rule municipal corporation under Article XVIII of the Ohio Constitution utilizing a council-manager form of government. On January 1, 1996, the City merged with Madison Township, more than tripling its population and land area. The resulting community is the fourth most populous City in Montgomery County with 27,420 residents. Its land area is surpassed only by the City of Dayton.

The City provides many services for the benefit of the citizens, including police protection. The bargaining unit in this case consists of members in the safety forces, more particularly police officers and detectives employed by the City of Trotwood. Currently, there are fifty-one (51) sworn police officers in the department. Forty-two (42) are in the bargaining unit while the remainder (6 Sergeants, 2 Captains, 1 Chief) are either in a separate bargaining unit or are exempt as supervisors.

The undersigned was appointed to serve as the Fact-Finder by the State Employment Relations Board on August 6, 2004. Although the parties engaged each other in collective bargaining, they were unable to resolve the single issue which is before the Fact-Finder. The issue is a wage re-opener for years two (2) and three (3) of the current contract.

The Fact-Finding hearing in this matter was held on October 13, 2004, at the Trotwood Government Center. Both parties were present and presented evidence and

arguments in support of their prospective position in regard to the wage re-opener. The undersigned was charged with the responsibility of providing a Fact-Finding Report and Recommendation on November 11, 2004.

II. Criteria

In compliance with Ohio Revised Code Section 4117.14 (G) (7) and the Ohio Administrative Code 4117-9-05 (J), the Fact-Finder considered the following criteria in making the recommendations contained in this report:

1. past collectively bargained agreements between the parties;
2. comparison of unresolved issues relative to the employees and the bargaining units with those issues related to other public and private employers in comparable work, given 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 of normal standard of public service;
4. lawful authority of the public employer;
5. stipulations of the parties; and
6. such factors not defined to those listed above which are normally or traditionally taken into consideration.

III. Findings and Recommendations

Article XXII – Compensation

OPBA's Position:

The Union proposal, as advanced in the Fact-Finding hearing, is to provide the bargaining unit members with a 5% across the board wage increase in year two (2) of the contract (the first re-opener year) and a 4% across the board wage increase in year three (3) of the contract (the second re-opener year).

The OPBA points out that heading into 2003 negotiations the City was experiencing dire financial difficulties and requested that the OPBA work with the City in addressing their financial concerns. The OPBA agreed and addressed the financial concerns in several ways. First, the OPBA took a \$1,750 lump sum payment in lieu of a base wage increase in the first year of the collective bargaining agreement. In addition, the Union agreed to wage re-openers in years two (2) and three (3) of the contract. The OPBA also agreed to allow the City to alter healthcare plan components, which ultimately costs employees participating in the healthcare plans more out-of-pocket expense and co-pay expense. Further, the parties agreed that the employees, for the first time, would pick up a portion of their healthcare premiums resulting in a 90%/10% split between the City and the affected employees.

The City also took other steps to alleviate its financial burdens. Until 2003, the City of Dayton collected income taxes for the City of Trotwood. In 2003, the City of Trotwood took the tax collection in house. As a result, Trotwood realized an income tax collection increase of over \$700,000 from the 2002 figures.

Also, the City was successful in getting four (4) fire levy replacements, which paved the way for new construction for new fire stations and the acquisition of needed equipment. Said monies can also be used for wages and benefits for the fire department, thereby, lessening the burden for the General Fund. Finally, the City has engaged in serious business re-development plans which will eventually produce revenues for the General Fund.

The OPBA also notes that the police department is minimally staffed and serves the second highest violent crime area in Montgomery County. However, comparables indicate that the City of Trotwood police officers are at the low end of the wage scale.

Finally, the Union argues that in good faith it assisted the City in meeting its financial concerns in 2003 and that good faith effort ought to be rewarded in 2004-2005. Granting the 5% increase in 2004 and granting a 4% increase in 2005 would yield a 9% base rate increase over the life of a three (3) year contract, or on average 3% per year. This is a completely reasonable proposal and the City has the fiscal wherewithal to fund the proposal. In fact, the unencumbered General Fund balance maintained by the City of Trotwood is as high as 15%.

Employer's Position:

It is the City's position that the officers in the bargaining unit should be provided a 3% across the board wage increase for year two (2) of the contract (year one of the re-opener) and a 2% across the board wage increase for year three (3) of the contract (year two of the wage re-opener). The City submits that the evaluation of this wage proposal must include all three (3) years of this collective bargaining agreement and not be solely limited to the second and third years. During the first year of the contract (August 1, 2003

- July 31, 2004), the employees in the bargaining unit received a lump sum payment of \$1,750. This \$1,750 is equivalent to a 3.5% wage increase at the top step of the wage scale and a 4.6% wage increase at the entry level of the wage scale. The City's proposal, when added to the \$1,750, effectively provides wage increases over the life of the agreement between 8.5% and 9.6%. Such increases are more than fair to the employees of this bargaining unit.

Moreover, it is asserted by the City of Trotwood that the wage rates for police officers and detectives compare favorably with other departments in the Miami Valley. With a 3% across the board wage increase, the City of Trotwood would fall ahead of Englewood, Riverside, the statewide average (of cities within 10,000-50,000 in population), Springboro, Clayton, Brookville, Miami Township, Butler Township, Carlisle, and Union. If adopted, the City's proposal for the increase of officer's wages would cost the City \$215,998 for the remaining two years of this contract.

Although the City managed in 2003 to collect an additional \$700,000 in income taxes, the evidence indicates that for the year 2004 to date, income tax collection is off. It is projected that income tax collection for 2004 will be \$200,000 less than in 2003. Thus, the City must be fiscally responsible in determining whether it can finance its proposal. It is estimated that over the life of the agreement for this safety unit, the cost of the Union's proposal would be somewhere in the neighborhood of an additional \$380,000 – \$410,000.

Finally, the City submits that this bargaining unit has been treated in a comparable fashion to other City employees. It is the City's view that the patrol officers are not being

singled out for treatment that is out of line with the treatment accorded to other Trotwood employees.

Thus, for these reasons and based on the evidence submitted in the Fact-Finding hearing, the City of Trotwood implores the Fact-Finder to adopt its proposal as the recommendation provided in the undersigned's Report.

Recommendation:

There is one issue to determine in this report – the wage re-opener for years two (2) and three (3) of the collective bargaining agreement. It is the Fact-Finder's responsibility to issue a recommendation that is fair and equitable. In addition, the recommendation should serve to foster collective bargaining. As a result, the undersigned is obliged to consider all relevant information provided by the parties at the hearing.

As noted above, the OPBA and the City of Trotwood have had a longstanding collective bargaining relationship which can best be described as amicable. Heading into the 2003 negotiations, the City was experiencing dire financial difficulties and requested that the OPBA work with the City in addressing their financial concerns.

The OPBA consented. Among the initiatives accomplished, which were designed to assist the City in cost savings, were the following:

- The OPBA took a \$1,750 lump sum payment in lieu of a base wage increase in the first year of the collective bargaining agreement.
- In year two (2), which began August 1, 2004, the OPBA agreed to a wage re-opener.

- In year three (3), which begins August 1, 2005, the OPBA agreed to a wage re-opener.

In addition, the OPBA agreed to allow the City to alter health care plan components which ultimately costs the employees participating in the health care plan more out-of-pocket expense and co-pay expense. Further, the parties agreed that the bargaining unit employees, for the first time, would pick up a portion (90%/10%) of their health care premiums. The City realized cost savings from the collectively bargained initiatives listed above. These initiatives assisted the City in dealing with its financial predicament. Such efforts by the OPBA cannot go unnoticed.

In addition, the City took the income tax collection in house. Previously, income taxes were collected by the City of Dayton. The City of Trotwood realized an income tax collection increase of over \$700,000 from the year before. This increase in income tax collection further enabled the City to extricate itself from its financial difficulties.

Under the circumstances, the OPBA has a legitimate expectation of receiving a “fair” wage increase consistent with the market. Defining a fair wage increase for both parties considering the market conditions and the financial picture of the City is a task that must be accomplished here.

As set forth above, the OPBA is seeking a total of 9% across the board wage increases for the last two years of the contract. In year two (2), the OPBA is seeking a 5% across the board increase. In year three (3), the OPBA is seeking a 4% across the board increase. The Union asserts that the requests of the increases are reasonable when taken over the life of the contract – three (3) years. The average percentage increase is 3% for each contract year.

In its analysis, the OPBA assigns zero compensation value to the \$1,750 lump sum payment which was given to the members of the bargaining unit in the first year of the contract. The Union asserts that 3% per year of a three (3) year contract is consistent with wage increases generally predicted this year throughout the State of Ohio and, more particularly, in police units. In addition, the OPBA points out that the department is minimally staffed and serves in the second highest violent crime area in Montgomery County. When compared to Xenia and North Royalton and other political subdivisions within Montgomery County, this bargaining unit is on the low end of the scale even with the requested base rate increases.

The City's analysis, not surprisingly, is different. The City has offered a 3% across the board wage increase in the second year of the contract (year one (1) of the re-opener). In addition, it has offered a 2% across the board wage increase in year three (3) of the contract (year two (2) of the re-opener). The City asserts that the lump sum payment received by the bargaining unit employees in 2003 was tantamount to a 3.5% increase for those at the top of the pay scale. By adding the total 5% wage increase over the next two (2) years, the bargaining unit employees at the top of the pay scale would realize the equivalent of an 8.5% wage increase which is in line with other communities. In other words, the City credits the full lump sum payment as a base wage increase in its analysis.

Neither the OPBA's assertion, nor the City's assertion with respect to the lump sum payment, resonates with the undersigned. Notwithstanding the Union's position, the \$1,750 lump sum payment in August 2003 has value as compensation received in the first

year of the contract. It constitutes money received over and above the hourly base rate of the contract.

The \$1,750 lump sum, however, is not the equivalent of a percentage base rate increase as suggested by the City. It does not serve to grow the base and the bargaining unit does not realize the impact on the overtime rate with the lump sum. This is particularly true for a bargaining unit of patrol officers and detectives who operate in the community that ranks second highest in incidents of violent crime in Montgomery County. The record suggests that the police department is minimally staffed and the officers book a significant amount of overtime. By accepting the lump sum in 2003, the bargaining unit did not realize the full potential of the fruits of its labor in serving the community.

While the lump sum cannot be totally ignored (as suggested by the OPBA), it cannot be given full credit as a percentage base rate increase (as suggested by the City). It is a component that must be taken into account when assessing the wage increase to be provided to the bargaining unit employees in the second and third years of the contract.

Given the circumstances, the City's proposed increase of 3% and 2% across the board is simply too low. The OPBA members worked in good faith to relieve the City of its dire financial consequences in 2003. Even with the projections for 2004 being flat, at best, the City has the ability to fund a 3.5% wage increase in the second year of the contract as well as a 3.5% wage increase in the third year of the contract. The unencumbered general fund balance is at approximately 15%. This unencumbered money can be used to finance wage increases if necessary.

Therefore, the undersigned recommends that retroactive to August 1, 2004, a 3.5% across the board wage increase is implemented for all members of the bargaining unit. In addition, it is recommended that beginning August 1, 2005, a 3.5% across the board wage increase be implemented for all members of the bargaining unit.

Respectfully Submitted,



Daniel N. Kosanovich
Fact-Finder
November 8, 2004