

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2005 MAY 20 A 11: 33

May 18, 2005

In the Matter of the Fact-Finding Between

THE CITY OF MIDDLEBURG HEIGHTS)

and)

OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)

Case No.: 04-MED-10-1135

Dispatchers

APPEARANCES

For the City:

Gina A. Kuhlman, Esq.
Timothy Pope

Attorney
Director of Finance

For the Union:

Mark J. Volcheck, Esq.
Jody Drew
Danielle Graziolli

Attorney
Dispatcher
Dispatcher

Fact-Finder:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the fact-finding proceeding between the City of Middleburg Heights, Ohio (“City”) and the Ohio Patrolmen’s Benevolent Association (the “Union”). The bargaining unit consists of all full-time Dispatchers in the Middleburg Heights Police Department. There are approximately six (6) employees in the bargaining unit.

The current collective bargaining agreement between the parties expired on December 31, 2004. Negotiations for a successor Agreement began in November 2004 and continued through the middle of January 2005. As a result of the negotiations, the parties were able to reach tentative agreements on all outstanding matters, except wages and effective dates for the health insurance. This fact-finding report presents recommendations on the two remaining issues. All tentative agreements reached prior to the fact-finding hearing are also recommended and incorporated by reference into this fact-finding report. By tentative agreement, the parties agree that this successor Agreement shall be for two (2) years commencing January 1, 2005 and expiring December 31, 2006.

Virginia Wallace-Curry was appointed fact-finder in this matter by the State Employment Relations Board. The parties declined the fact-finder’s offer to mediate the issues, and a hearing was held on May 3, 2005, at which time the parties were given full opportunity to present their respective positions on the issues. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended. In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (1) Past collectively bargaining 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.

UNRESOLVED ISSUES

1. ARTICLE XIX - SALARY SCHEDULE

Union's Position

The Union proposes an across the board increase of 4% for each year of the contract and an across the board equity increase of \$0.70 per hour for each year of the contract. In terms of percentages, the Union's proposal amounts to across the board increases for topped-out employees of 7.6% for 2005 and 7.3% for 2006. The equity increases are based on internal and external comparables and relative standing of the Dispatchers among Cuyahoga County Police Departments as compared to the City's OPBA patrol unit.

The Union argues that the Dispatchers have similar duties and responsibilities as the City's Office Specialists. In addition to answering incoming phone calls, including 911, the Dispatchers have

numerous clerical and administrative duties, such as typing officers' reports, complaints, warrants; performing record checks; and issuing garage sale, solicitor, and parking permits. The Office Specialist position is a non-bargaining unit position at Pay Grade 22, which receives \$18.95/hour at the midpoint level and \$21.82/hour at the maximum level. Dispatchers top out after three years at \$17.46/hour.

In comparing Dispatchers' compensation with 12 Cuyahoga County suburbs¹, the City's Dispatchers' top pay is only 93.81% of the average, and total compensation (which includes uniform allowance, shift differential, longevity and other non-salary compensation) is only 91.01% of the average. In comparison, the City's patrol unit fares much better. Compared with the same 12 suburbs, the City's patrol unit's top pay is 103.60% of the average and total compensation is 100.60% of the average.

The City acknowledges that the wage scale for this bargaining unit is too low. City representatives have promised to correct this, dating back to negotiations for the prior contract. However, the City has not proposed any correction. The City offered only the same compensation that it settled with the OPBA Patrol Officer's Unit and the Ranking Officers Unit – an across the board increases of 3.25% and 3.5% respectively for the two years of the contract. This increase will not close the gap between the Dispatchers and comparable City employees or comparable Cuyahoga County dispatchers.

¹Beachwood, Bedford, Berea, Broadview Heights, Brook Park, Brooklyn, Garfield Heights, Highland Heights, Independence, Mayfield Heights, North Olmsted, Parma Heights, and Middleburg Heights.

City's Position

The City is proposing wage increases of 3.25% upon execution of the new Agreement and 3.5% effective on January 1, 2006. All other City bargaining units agreed in negotiations to the same pattern wage percentage increases. These units include the OPBA patrol unit, the OPBA sergeants unit, the OPBA lieutenants unit, the IAFF, representing the Firefighters, and AFSCME, representing service workers. The same wage increases were adopted for all non-bargaining unit City employees as well. The Dispatchers are the only bargaining unit that has not ratified a contract.

The City contends that the pattern, set in previous negotiations, should be followed. Pattern bargaining is a respected practice in the labor relations field, particularly for benefits generic to all bargaining units, such as wages and health insurance. The employer with multiple unions is required to provide benefits to all employees as equally as possible.

Furthermore, a pattern once established places a heavy burden upon the Union to prove the necessity of defeating a bona fide pattern. Conciliator David Pincus, in IAFF Local 1144 and City of Bay Village, SERB Case No. 03-MED-09-1019, found that when challenging a pattern, the following must be proven:

1. That the employer's position does not derive from a true pattern.
2. The pattern argument is an attempt to abolish unique rights and privileges achieved by a bargaining unit.
3. The pattern would be antithetical to the function or history of the bargaining unit. Mere inappropriateness is not enough to overcome a practice.
4. The economic offer is strikingly insufficient to compensate the particular group of employees equitably. Such an offer will not supplant a fair settlement no matter how many other units have ratified the pattern.

In the instant case, the City has maintained a history of pattern bargaining, and the wages paid by the City to its Dispatchers are not “strikingly insufficient” when compared to other dispatchers. The City’s annual top pay for Dispatchers is slightly above the average for the seven Cuyahoga County suburbs along the same I-71 corridor² as the City.

The Union cannot prove that the pattern bargaining established in the City should not be followed. Therefore, the City’s most recent pattern bargaining, awarding 3.25% and 3.5% wage increases, should be followed. Moreover, any wage increase should be effective upon execution of the new Agreement, particularly in light of the fact that this unit has gained a windfall by default in refusing to agree to implementation fo the healthcare plan modifications where all other City employees have.

RECOMMENDATION

Across the board wage increases of 3.25%, effective January 1, 2005, and 3.5% effective January 1, 2006.

Rationale

The City’s position to extend the same wage increases to the Dispatchers as was offered and accepted by other City employees, union and non-union, is recommended. Such pattern bargaining is a well-established and beneficial practice in industrial relations. It promotes stability and equity for the City and its various unions and protects both parties from whipsawing. As noted by the City, any deviation from an established pattern can be detrimental to industrial relations stability and should be

²Berea, Broadview heights, Brook Park, North Olmsted, North Royalton, Parma Heights, and Strongsville.

made only if the union can prove that it is not a true pattern; it is an attempt to abolish unique rights and privileges of the union; it is antithetical to the functions or history of the bargaining unit; or it is an economic offer strikingly insufficient to compensate a particular group of employees.

It is the latter point on which the Union relies in this instance. The Union claims that the wages of the City's Dispatchers is over 6% below the average top pay and almost 9% below the average total compensation of 12 Cuyahoga County suburban cities.³ The Union gives no specific justification for its choice of comparable cities, other than they are other Cuyahoga County suburbs. Their populations range from one half of the City's population to over twice the population (7, 109 to 34,113 , compared to the City's 15,542). No economic data about the jurisdictions was given. The City's choice of comparable jurisdictions is based only on their location along the highway, I-71. A survey of the data from these seven suburban cities, shows that the City's Dispatchers meet the average top pay for dispatchers. In looking at only those jurisdictions that are common to in both parties' lists⁴, the City's Dispatchers' top pay rate is 1.8% below the average.

However, whether the difference between other jurisdictions top pay and the City's top pay for Dispatchers is 6%, 0% or 1.8%, the difference is not so significant as to warrant deviation from the pattern wage increases established by the City with its other unionized employees. The economic offer

³The Union also attempted to show that the Dispatcher position should be compared to the Office Specialist position, which receives a higher pay rate than the Dispatcher. While the Dispatchers perform many clerical and administrative duties like an Office Specialist does, such a comparison is extremely difficult given the limited information that can be submitted at a fact-finding hearing. It is more accurate to compare employees in the same job in different locations in the area. While some of these duties may differ from city to city, the core of the job is the same and dispatchers in the area share a common applicant pool for hiring.

⁴Berea, Broadview Heights, Brook Park, North Olmsted, and Parma Heights.

to the Dispatchers would not be “strikingly insufficient” to compensate this group of employees. The Dispatcher’s current wage rate is not woefully below the average for those jurisdictions cited by the parties, and the wage increases offered are within the range that other jurisdictions will be receiving in the coming year. Those gross wage increases range from 3% to 4.5% and average around 3.5%. The City’s offer of 3.25% for the first year and 3.5% for the second year are within that range.

The City’s proposal to have the wage rate for 2005 effective on execution of the Agreement is not recommended, however. The City cites the fact that the Dispatchers will receive a windfall not agreeing to the health care package by April 1, 2005, like other City employees. This argument is not persuasive. The testimony of Dispatchers at the hearing showed that the City had recommended to the Dispatchers that the Union wait the last to settle, alluding that perhaps Dispatchers could receive some kind of benefit after others had settled. This was done during the prior negotiations and during the current negotiations. It seems disingenuous to allude to possible rewards twice, not come through each time, and then try to penalize the Union for not settling for the same package as other unions. Furthermore, the City did not place any numerical value on the possible windfall achieved by failing to settle on April 1, just over one month ago. This windfall is speculative at best. The lost of money from an increase of wages for the first five months of the year is significant indeed and is not justified here.

2. **ARTICLE XXI - INSURANCES**

City’s Position

The City is proposing a change to Article XXI, Section 21.01 to reflect the current healthcare plan that went into effect April 1, 2005 for all other bargaining units, as well as all non-bargaining unit

employees, in the City. The City proposes that the healthcare plan modifications should have been effective for this unit on April 1, 2005 as well; and as such should be made effective as soon as possible. The parties have tentatively agreed to all other modifications to the healthcare plan, but have been unable to agree upon the effective date of the new plan provisions. Essentially, the new healthcare plan provision eliminates deductibles; provides for an 80/20 contribution for in-network coverage and 70/30 for out-of-network coverage for the first \$4,000 (as opposed to \$2,000 under the expired CBA); provides for \$15.00 office-visit co-pays for the first 15 visits; and increases co-pays for brand-name prescriptions.

The City's position is based upon obtaining parity with other bargaining units for whom the healthcare changes have been in effect. Any deviation therefrom produces inequitable results. The unit should not receive a windfall over all other City employees by simply hold out for fact-finding. The substantive modifications to the healthcare plan is based upon the increasing costs of health insurance that the City has experienced over a number of years, as well as declining budget carry-overs, and are directed to individual usage. The substantive modifications were limited in their economic impact upon employees in conjunction with the across-the-board wage increases agreed to by every other bargaining unit and in effect for all City employees.

Union's Position

The Union and the City have reached agreement on the substantive matters of insurance. The only items for fact-finding relate to when the new insurance co-pays for deductible, out-of-pocket, prescription drugs and physician office visits become effective. For paragraphs (a), (b), (d), and (e) of

Article 21.01, the Union proposes that the provision become effective upon execution of the collective bargaining agreement.

The parties agree that at whatever date effectuation is deemed, deductible and out-of-pocket expenses paid by the employees this year shall be applied to the new maximums of paragraph (b). It is also understood by the parties that the employees are presently under the insurance program from the 2004 contract.

It is the Union's position that effectuation upon an executed agreement is customary and the least confusing method of implementation.

RECOMMENDATION

It is recommended that Article 21.01 paragraphs (a), (b), (d) and (e) of the tentative agreement on healthcare insurance be effective upon execution of the collective bargaining agreement.

Rationale

The Fact-finder agrees with the Union that having the health care package effective upon execution of the Agreement is the least confusing method of implementation. The City proposed that the effective date be as soon as possible, and it is difficult to imagine what would be sooner than the execution of the Agreement. A retroactive effective date, such as April 1, 2005 would be difficult to administer. The windfall that employees may receive between April 1, 2005 and execution of the Agreement will be minor, if the parties agree to accept the fact-finding recommendations.

This fact-finding report is submitted by:


Virginia Wallace-Curry, Fact-finder

Cuyahoga County
May 18, 2005

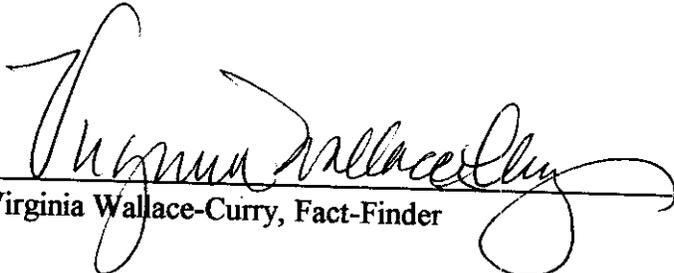
CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact-Finding Award for the City of Middleburg Heights, Ohio and the Ohio Patrolmen's Benevolent Association was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, May 18, 2005. The Fact-Finding Award was served upon:

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May 18, 2005

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RE: OPBA and City of Middleburg Heights (dispatchers)
04-MED-10-1135

Dear Mr. Volcheck and Ms. Kulman:

Enclosed is a copy of my fact-finding award in the above captioned matter, along with the statement for my services and expenses rendered as Fact-finder.

I enjoyed working with you and hope I will have the opportunity to do so again in the future.

Sincerely,


Virginia Wallace-Curry

POSTNET



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