

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

STATE EMPLOYMENT
RELATIONS BOARD

2005 JUN 27 A 9 25

**FACT FINDING PROCEEDING
05-MED-02-0070**

**Ohio Patrolmen's Benevolent Association,
Employee Organization**

and

**City of Oakwood,
Employer**

**REPORT AND RECOMMENDATIONS OF THE FACT FINDER
ISSUED: June 24, 2005**

Appearances:

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

**Jeffrey A. Mullins
Coolidge, Wall, Womsley & Lombard
Suite 633, West 1st Street
Dayton, OH 45402-1289
(For the Employer)**

REPORT AND RECOMMENDATIONS

I. Background

The City of Oakwood is located in Montgomery County, Ohio. It has a population of approximately 9,200 residents and covers an area of less than three (3) square miles. It is located immediately adjacent to Dayton, Ohio.

The City employs approximately 92 employees in its various departments. The second largest department in the City is the Public Safety Department which is structured in a unique fashion. The City has a predominantly residential character and years ago determined that given its small size, the Public Safety Department would be organized in such a fashion as to allow individuals to serve as police officers, fire fighters, and paramedics. The City of Oakwood is one of less than 40 departments nationwide that have the same officers who perform all three (3) of these safety functions.

The staff of the Public Safety Department is as follows: 25 Public Safety Officers, 4 Lieutenants, 2 Captains, and 1 Public Safety Director.¹ The Public Safety Officers are in a bargaining unit that is represented by the Fraternal Order of Police, Lodge 107. The Lieutenants are in a bargaining unit that is represented by the Ohio Patrolmen's Benevolent Association. The Lieutenants Unit is described as follows: "[A]ll sworn Lieutenants except for those members who would be excluded from the unit by law." There are three (3) crews within the Public Safety Departments. One (1) is on duty and the other two (2) are off duty for each day of the rotation. Likewise, three (3) of the four (4) Lieutenants work a 24-hour on/48-hour off platoon shift. The other Lieutenant serves as a training officer. He works a 5-day 40-hour/week schedule.

¹ While this structure has remained in place for many years, up until 1987, the Lieutenants were referred to as Sergeants. In 1987, their title was changed but their duties were not changed in a significant manner.

The parties' previous collective bargaining agreement expired on December 6, 2004 and the parties proceeded to negotiate to replace the prior collective bargaining agreement. On April 7, 2005, the undersigned was appointed Fact-Finder in this matter in compliance with the Ohio Revised Code Section 4117.14 (C) (3). A fact-finding hearing was scheduled to be conducted on May 31, 2005. In accordance with Rule 4117-9-05 of the Ohio Administrative Code, both parties submitted position statements in support of their respective positions.

At the outset of the hearing, the parties identified four (4) unresolved issues. Those issues were Article 6 – Wages; Article 14 – Hospital and Medical Insurance; Article 31 – Scheduling; and Article 29 – Duration. In addition, at the outset of the hearing, the City agreed to retroactivity back to December 7, 2004.

Consistent with statutory obligations placed on the fact-finder, the undersigned offered to mediate the outstanding issues. The parties were reluctant to attempt to mediate the issues. The issue regarding scheduling (Article 21) and the issue regarding duration (Article 29) were resolved. Thus, evidence was adduced at the hearing on the unresolved issues of Wages (Article 6) and Hospital and Medical Insurance (Article 14).

II. Criteria

In compliance with the Ohio Revised Code Section 4117.14 (G) (7) and the Ohio Administrative Code 4117-95-05 (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 6 – Wages

OPBA's Position:

The OPBA asserts that it is a matter of fairness and equitable treatment of the Lieutenants vis a vis the City's Public Safety Officers to adopt its position on wages. The Union points out that the PSO's received a 5% wage increase in 2003, a 5% wage increase in 2004, and are scheduled to receive a 5% wage increase in October 2005. The Lieutenants, on the other hand, received a wage increase of 3.8% in 2003.² One of the effects of this disparity in wage increases between the public safety officers and the Lieutenants is to reduce the rank differential to 6.6%.³ Not only does this small rank differential suggest that a significant wage increase is warranted in this case, the PSO's can be upgraded to ACCO's (Acting Crew Command Officer) and receive a 15%

² The Lieutenant's collective bargaining agreement expired on December 6, 2004. The parties that mutually agreed that any wage increase obtained in these negotiations shall be retroactive to December 7, 2004.

³ A review of the external comparables ranked differential in between safety officers and front line supervisors for departments in Montgomery County reveals that the average rank differential is 16% with the lowest being 12.9%.

premium over their regular hourly wages, thereby earning more than the Lieutenants that supervise them.

Given the unique nature of the system of public safety utilized by the City of Oakwood, it is only fair and equitable to have the rank differential adjusted upwards significantly. Thus the OPBA proposes that beginning in December 2004, the rank differential between the top PSO pay and the top pay of the Lieutenants be adjusted to reflect a 13% rank differential. This adjustment in rank differential reflects a 6% wage increase for the Lieutenants in 2004. Effective in December 2005, the Union proposes that the rank differential be adjusted upward to 14% between the PSO's and Lieutenants, which translates into a 5.8% wage increase. In the third year of the contract, the OPBA proposed the rank differential to be adjusted upward to 15% between the PSO's and the Lieutenants.⁴

The Union notes that the Lieutenants are required to take on significant additional responsibilities in the multi-faceted system of public safety employed by the City of Oakwood. For instance, PSO's work eight (8) hours of a 24-hour shift performing police work functions. The PSO's are then required to be available for eight (8) hours of "in-house" standby during which they can rest. The final eight (8) hour segment of a 24-hour shift requires the PSO's to be "on-call" for emergencies. The Lieutenants are required to supervise all phases of this multi-faceted department. In addition, the Lieutenants are responsible for the review and preparation of daily reports, security of the building and grounds, special assignments, daily staffing, budgetary matters, long-term planning, and disciplinary investigations.

⁴ The public safety officers are entering the last year of their contract. Therefore, exact percentage wage increase associated with the Union's proposal for a 15% rank differential is unknown. It will depend upon the wage increase negotiated by the PSO unit.

The City can afford to finance the Union's proposal. The OPBA estimates the cost of its proposal of the first year of the contract to be \$16,780 (\$4,195 x 4). Assuming roll-up costs of 30% associated with the wage increase, the Union estimates the cost of the increase to be roughly \$20,000. The cost of wage increase proposed by the Union for the second year of the contract would be \$17,340 (\$4345 x 4). Adding roll-up costs, the results in the total cost for the wage increase in the second year would be roughly \$23,000. Of course, given the circumstances the cost of the Union's proposal in the third year is unknown.

The record indicates that a 2003 audited financial statement shows that the City had an unencumbered fund balance of over 5 million dollars, which represents 42% of the transfers out and expenditures for the City that year. The standard of prudence used by groups such as Moody and S&P is a 5% unencumbered fund balance. Furthermore, a cash position statement (not audited) for the City in 2004 shows an unencumbered fund balance of 2-3 million dollars. The City can afford to finance the Union's proposal.

City of Oakwood's Position:

It is the City of Oakwood's position that the Lieutenants should receive a 3% wage increase across the board effective December 7, 2004. In addition, the City proposes a 3% wage increase for 2005 and 2006. Adopting such a wage increase accomplishes several things. First of all, the Lieutenants are direct line supervisors. In comparing the other direct line supervisors in the pool of comparables generally utilized, one finds that the Oakwood Lieutenants are at the top of the range in wages. Thus, a 3% increase would maintain the Lieutenants posture as the top paid front line supervisors in comparable units while it allows the City to manage its expenditures. The City also

asserts that granting a 3% wage increase will increase the rank differential between PSO's and Lieutenants from 6.6% to 9.6%.

Historically, the Lieutenants wage increases have never been tied to the PSO increases. In fact, according to the City, history demonstrates that the Lieutenants knowingly agreed to wage increases over the past ten (10) years which narrowed the gap gradually in the rank differential between PSO's and Lieutenants. The record reflects that all work groups over the past ten (10) years have realized lesser wage increases as time has passed with the exception of the aberration caused by the Keenan Award of 5% wage increases in each year of the three (3) year contract for the PSO's beginning in 2003. The City argues that the Fact-Finder should not allow the exception created by the Keenan Award to skew the wage increase for the Lieutenants unit unfairly upward.

The City also notes that Keenan Award must be distinguished from the Lieutenant situation in that the City was seeking to gain healthcare premium contributions from the PSO in the last round of negotiations. Conciliator Keenan determined that a nearly 5% healthcare premium contribution was appropriate and offset the healthcare contributions by granting a 5% wage increase. The Lieutenants have had a provision in their collective bargaining agreement allowing healthcare premium contributions since 1993. While the City believes that increasing the rank differential gradually is appropriate, offering a 6% wage increase to the Lieutenants in year one of the contract and a 5.8% wage increase in year two of the contract and an unknown percentage increase in the third year of the contract is simply unwise. Furthermore, drastically increasing rank differential in this round of contract negotiations will create further compression issues at the top of the public safety office scale. Lieutenants receive overtime as opposed to the Captain or the

Safety Director. As a result, gross income for three (3) of the four (4) Lieutenants exceeds that received by the Safety Director. The City must be sensitive to compensation compression issues above the rank of Lieutenant, as well.

In summary, the City seeks to maintain the level of top rated compensation for its Lieutenants; however, it seeks to manage the increases in a responsible way.

Recommendation:

One of the major factors to be considered in preparing a fact-finding report is the history of the collective bargaining between the parties. In this case, a review of the history of the bargaining between the City's and the Lieutenant's bargaining unit indicates that the fate of the Lieutenants negotiation was never tied to those of the PSO's. The Lieutenants bargaining unit has gone to fact-finding only once in the last 15 years of the collective bargaining and has never resorted to conciliation. Since 1995, the Lieutenants have averaged wage increases of 3.96% per year. The PSO's have averaged a wage increase of 4.58% per year. Moreover, this historical review of collective bargaining reveals that the rank differential between the PSO's and Lieutenants has narrowed significantly over the last 8-10 years of collective bargaining, without evidence of protest from the Lieutenants. The rank differential currently stands at 6.6%.

Under the circumstances, it would be inappropriate to recommend the Union's proposal. As noted above, the OPBA is seeking a rank differential of 13% retroactive to December 2004, which amounts to a 6% wage increase. Effective December 2005, the Union proposes to readjust the rank differential upwards to 14%, which is a 5.8% wage increase. Finally, the Union seeks a 15% rank differential effective December 2006, which will presumably amount to another significant wage increase. The OPBA asserts

that the external comparables demonstrate that rank differentials average 16% between officers and front line supervisors and based on the strength of these comparables, the Lieutenants pay should be adjusted upward in accordance with the Union's proposal. The bargaining history simply does not support this proposal.

However, the bargaining history does not support the City's proposal of a 3% wage increase in each year of a three (3) year agreement. As set forth above, since 1995, the Lieutenants have averaged wage increases of approximately 4% per year. The City has offered substantially lower than the historical average. However, the City has the financial wherewithal to support a greater wage increase. Moreover the 3% wage increase proposed by the City fails to take into account the special skill set a Lieutenant must command in a multi-faceted public safety operation employed by the City of Oakwood.

Therefore the undersigned recommends that the Lieutenants receive a 4% wage increase effective December 7, 2004, 4% wage increase effective in December 7, 2005, and a 4% wage increase in December 7, 2006. The mutual adoption of this recommendation serves to reward the Lieutenants for the skill set that they bring to the job and for the responsibilities that they assume in the performance of their duties. The recommendation will maintain their status at the top of the pool in comparables of front line supervisors, without the City overreaching. In fact, it is significant to note that scrutiny of the external comparables related to negotiated wage increases for Lieutenants in 2004 indicate the average wage increase for 2005 is 3.18% and for 2006 is 3.0%. The recommendation exceeds those averages. Also, this recommendation is consistent with past collective bargaining efforts and compares favorably to the bargaining

accomplishments of the public works bargaining unit and the dispatchers over the past ten (10) years of negotiations.

Article 14 – Health and Medical Insurance

OPBA’s Position:

The position of the OPBA is relatively straightforward with respect to healthcare. The Union proposes to modify Article 14, Section 14.1, as follows:

Each employee shall be provided with group hospital, medical care, and vision insurance to be paid by the City, at benefit coverage levels equal to those provided to the City’s management and office employees. ~~However, during the term of this agreement, should the City’s management and office personnel be required to contribute toward the monthly health insurance premium, contributions by the employees covered herein will be the same monthly premium levels of the City’s management and office personnel.~~ *During the term of this Agreement, any contribution for monthly healthcare insurance premiums by employees of this bargaining unit will be at the same monthly premium level as the City’s Public Safety Officers.⁵*

The parties acknowledge the City’s right to change insurance carriers during the term of this Agreement.

City of Oakwood’s Position:

The City’s position is equally as direct. It proposes to maintain the status quo with respect to the language of Article 14, Section 14.1. The current collective bargaining language has been in the contract since 1993. However, the record indicates that despite a

⁵ The portion of the contract struck through would be eliminated by the Union’s proposal, and the bold-faced, italicized language would be added to Section 14.1 of the Agreement.

cost increase of approximately 81% over the past five (5) years, the Lieutenants began contributing to monthly healthcare insurance premiums two (2) years ago. The monthly contribution to the premium is \$40.50, or 4.6% of the cost of the premium. This contribution level is well below the average healthcare contribution levels assumed statewide, and there is no evidence that its right to require contribution to healthcare and medical insurance premiums has been abused. Thus, there is no compelling reason to modify this provision.

Recommendation:

Historically, the Lieutenant's negotiations have never been tied to those of PSO's. In fact, from a historical perspective, the Lieutenant's bargaining unit stands on a very different footing than the PSO bargaining unit. Until the last round of collective bargaining, the Public Safety Officer's contract was devoid of any language requiring or permitting healthcare premium contributions. In 2003, as a result of Conciliator Keenan's Award, the PSO's were required to contribute to their healthcare premium cost. According to the Award, in the first year of the contract, the premium contribution was capped by the amount management and office personnel were required to pay. In the second and third years of the contract, the PSO's contribution level was limited to the actual dollar amount paid in year one (1) without regard to the percentages of contribution.

On the other hand, since 1993, the Lieutenants have had a provision in their collective bargaining agreement allowing the City to require the Lieutenants to contribute

to healthcare premiums. The Lieutenants agreed to a “soft cap” as defined by the contribution level absorbed by management and office personnel.⁶

As noted above, despite an 81% increase in health insurance costs in the past five (5) years, the City only recently has required contributions from the Lieutenants. The “soft cap” created by being tied to the contribution level required to be paid by management and office personnel appears to have served the parties in good stead. There is no reason to anticipate the City increasing the required contribution levels dramatically over the next two (2) years.⁷ In fact, any attempt to significantly raise the contribution levels during the life of the Agreement would serve to render the “soft cap” ineffective and justify the OPBA seeking protection from the “hard cap” such as the PSO’s currently have.

Moreover, the monthly contribution of the Lieutenant’s is \$40.50 per family coverage and \$13.07 per single coverage. Quoting from the *2004 13th Annual Report, on the Cost of Health Insurance in Ohio’s Public Sector*: “When employees pay a portion of the premium cost for minimal coverage, the monthly contributions average \$41.30 and \$112.43 for single and family coverage respectively. These rates amount to 11.8% of the cost of the single plan and 12.3% of the monthly family premium.” The Lieutenant’s contribution is substantially lower than the statewide average. In addition, the record indicates the contribution level for Lieutenants compares favorably to a pool of comparables in Montgomery County.

⁶ The record suggests that the Public Works bargaining unit members and dispatchers have a similar cap on health insurance premium contributions.

⁷ In light of the fact that the contract is effective retroactive to December 2004, and the benefit year begins in November, this report only impacts years two (2) and three (3) of the collective bargaining agreement with respect to health insurance for premium contributions.

Absent of a more compelling reason to modify the language of Article 14, Section 14.1, the status quo should be maintained. Thus no change is recommended to the language of Section 14.1.

IV. Conclusion

Based upon the evidence and testimony presented to me, I have made the specific recommendations with regard to wages and health and medical insurance contained in this report. In addition, incorporated by reference are all the tentative agreements reached during their collective bargaining process including the agreements reached during the mediation phase just prior to the fact-finding.

V. Certification

This Fact-Finding Report is based upon the evidence and testimony presented to me at the fact-finding hearing I conducted on May 31, 2005.

Respectfully submitted,



Daniel N. Kosanovich
Fact-Finder
June 24, 2005