



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

2007 FEB -5 P 12: 23 **REPORT & RECOMMENDATION
 OF THE FACTFINDER**

AS ISSUED

GREGORY JAMES VAN PELT

February 2, 2007

IN THE MATTER OF:

)	
City of Elyria)	
<i>(Employer)</i>)	
)	
<i>-and-</i>)	
)	
Elyria Police Patrolmen's Association)	SERB Case No.: 06-MED-03-0204
<i>(Union)</i>)	
)	
)	

APPEARANCES:

On Behalf of the Employer:

Howard Heffelfinger	Ex. VP, Clemans, Nelson & Assoc.
Robin Bell	Regional Manager, Clemans, Nelson & Assoc.
Chris Eichenlaub	Safety, Service Director
Michael Medders	Chief of Police
Thomas J. Smith	Administrative Attorney

On Behalf of the Union:

Robert M. Phillips	Advocate
Daniel Sumpter	EPPA President
David Ross	EPPA Committee Member
Jason Cunningham	EPPA Committee Member
William Witt	EPPA Committee Member

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February 3, 2007

Mary Robertson
SERB
65 East State Street, 12th Floor
Columbus, OH 43215-4213

Re:

City of Elyria
(Employer)
-and-
Elyria Patrolmen's Association
(Union)

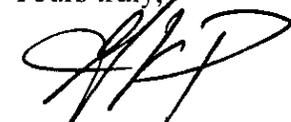
SERB Case No. 06-MED-⁰³~~06~~-0204

STATE EMPLOYMENT
RELATIONS BOARD
2007 FEB -5 P 12: 23

Mary:

Enclosed please find a copy of the Report & Recommendations of the Factfinder in the above-captioned matter.

Yours truly,


Gregory J. Van Pelt

Submission

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained until July 1, 2006. 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 six occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested that the Factfinder attempt mediation of unresolved issues prior to holding an evidentiary hearing. A mediation session was accordingly convened on October 5, 2006 at the City of Elyria City Hall in Elyria, Ohio. Mediation resulted in the withdrawal or settlement of a number of proposals at impasse between the Parties, but failed to resolve the remaining issues below. Accordingly, an evidentiary hearing was held on December 5, 2006, in Elyria, Ohio, 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 12 - Wages**
- 2. Article 18.9 – Sick Leave**
- 3. Article 31 - Senior Patrolman Proficiency**
- 4. New Article – Firearms Proficiency Allowance**
- 5. New Article - Support Car Program**
- 6. New Article – Equitability**

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 DISCUSSION OF STATUTORY CONSIDERATIONS

The City of Elyria (hereinafter City or Employer) is the county seat of Lorain County, located on the periphery of the Cleveland metropolitan area. Its more than 55,000 residents are served by the 63 members of the Elyria Police Patrolmen's Association (hereinafter Union or EPPA). The Parties relate under the terms of a collectively bargained Agreement last concluded in 2003, which obtained until June 31, 2006. The Parties have agreed to retroactive application of provisions of this successor Agreement.

The Employer makes no argument of inability to pay the increases and compensation sought by the Union. And in fact, its present financial situation would fail to support that assertion. Its October 30, 2006 Certificate of Estimated resources listed fourth quarter

increases of \$1,277,600 in the City's General Fund, to \$33,268,486. Likewise, the Special Revenue Fund increased \$250,000. in the fourth quarter, to \$22,278,806. Elyria's General Fund balance was about \$3,860,000. at the end of October, 2006. The citizens of Elyria have passed a Police Levy of ¼ of 1% specifically for the law enforcement purposes. Increases in the General Fund were primarily due to better than expected income tax collections; those in the Special Revenue Fund to investment income increases, as well as Municipal Court fines and forfeitures and increased Policy Levy Funds likewise reflecting increased income taxes.

A primary issue in these negotiations is the statutory admonition that the Factfinder consider "the interests and welfare of the public". In this case, the interests and welfare of the public with regard to the City's ability to attract and retain qualified, experienced police officers. Both the testimony of the Police Chief and a Memorandum from him to the Mayor, Safety-Service Director and City Council speak to the problem. The Memorandum, dated November 22, 2006, begins: "I would like to address an emerging issue that I feel will have a major impact on the operation of the Elyria Police Department."

The Chief's Memo continues, detailing the problem clearly and accurately. The City desires to increase the size of the Elyria Police Department from its present 86 Officers to about 95 or 96 in 2007 and has identified and is in the process of hiring four new Officers. The City is presently actively recruiting and is planning a police entrance examination scheduled for early in 2007.

However, the Chief identifies from one to three veteran Officers leaving the City's employ over the course of the next year. Moreover, in the words of the Chief's Memo:

... If the past two testing cycles are an indication, I am concerned that the number of applicants that the City of Elyria is able to attract is too low to give us a good selection. In my opinion, while there may be several issues that are causing the City of Elyria to have trouble recruiting new officers, but the major issue, both in Elyria and nationally, is pay. Many cities, including some local agencies, have gone to monetary incentives to entice officers to their cities and as a result, other cities, including Elyria, are losing quality candidates (and existing officers) to those departments that are offering higher starting salaries. During 2006, the Elyria Police Department had two officers accept positions with the [neighboring] City of Avon, where experienced officers start at \$42,000 (compared to the \$38,272.24 starting salary for an Elyria police officer.) A third officer left Elyria to go to an agency in North Carolina. We also made job offers to quality candidates who turned down our offer to go with higher paying agencies in surrounding counties.

The Chief's concern is supported by the SERB Clearinghouse Benchmark Report,

which places the City of Elyria's \$38,272.24 starting pay and \$46,272.24 top pay below the average of \$44,476.44 to start and \$57,121.84 top pay average for Police Officers in comparable communities cited in the SERB Benchmark data.

Several other issues, not before the Factfinder directly, nevertheless greatly affect these negotiations. At present the Health Care Plan provided to City Employees is directed by a Committee comprised of representatives of each of the City's organized units, as well as other employees and administrators. There is no question that the organized employees are sufficiently represented on the Health Care Committee as to constitute a voting majority, and thus have substantial impact on the health care provided all City employees.

Currently, coverage is provided by Medical Mutual, under its SuperMed Plus plan. That Plan provides 90% coverage after deductibles of \$200 single and \$400 family, with maximum out-of-pocket maximums of \$1,000/\$2,000. It is the only plan in this neutral's experience providing a Wig and Toupee benefit of \$100. However, the cost of employee participation is high. According to Union information, the current monthly premium for family coverage is \$130. Under terms of the current coverage, employees are subject to an additional premium increase of 15% of any increase in medical costs above \$826. per month. Added to the \$400 deductible, the approximately \$1,560 premium co-pay totals \$1,960 annually, for 90%-10% coverage. As the Union points out, medical coverage for Elyria employees can total almost \$1.00 per hour, or 5% of the annual wages of top level patrol officers.

On the other hand, the Employer expresses concern about the implications of the City's generous longevity agreement with the EPPA, found in §§ 12.5-9. Bargaining unit members receive longevity benefits equal to 1% for each year of employment with the City, up to a maximum of 20%. The Employer's concern regards the exponential increase the longevity provision effects on each 1% of increased base wage at the entry level. The EPPA concedes the generosity of the longevity benefit, but argues that it was bargained in exchange for other concessions in past agreements, and must be retained.

Finally, Elyria Police Officers' pension plans are administered by the Ohio Police & Fire Pension Fund (OP&F). Having determined that it may not be able to fund future obligations at current contribution levels, the OP&F has notified members of an increase in withholding levels from the current 10% per pay period, pending legislative approval.

Increases would occur on a schedule providing for .5% in 2007 (to 10.5%); an additional .5% in both 2008 and 2009 (to 11% and 11.5%, respectively); and .25% increases in 2010 and 2011 (to 11.75% and 12% respectively). The LPPA argues that these increases will affect member's take-home pay; thus further eroding already low wages. The Employer points out, quite correctly, that the contributions go to the officer's retirement plan, and are not reductions in pay.

The Factfinder takes notice that the CPI-U for the period December 2005 – December 2006 was 2.5%.¹ It is with regard to the above statutory considerations, as well as to the factual determinations detailed below, that the Factfinder respectfully renders the following Report & Recommendations.

FINDINGS AND RECOMMENDATIONS

1. Article 12 - Wages

EPPA Proposal:

The Union proposes increases of 4.75% in the base wage rate in each of the three years of the successor Agreement.

The EPPA asserts that the City's compensation and benefits are insufficient to allow it to recruit new Police Officers. In support of this contention, the Union offers the testimony of the Police Chief, to the effect that he has found it difficult to recruit the number of Officers needed to increase the ranks of the Elyria Police Department to desired levels.

The Union presents SERB Benchmark Data in support of its contention that Elyria Police Officers are not paid at wage rates comparable to peer communities. According to that data, EPPA members receive \$38,272. to start, with a maximum of \$46,272; as compared to a Benchmark average of \$44,476 and \$57,121 respectively.

Additionally, the EPPA points to the health care premium and deductible expense that it maintains amount to almost 1% of Elyria Patrol Officer's wages at the highest rate.

Finally, the Union argues that increases to the pension contributions made by bargaining unit members will increase 1.5% over the course of the successor Agreement.

City Proposal:

The Employer proposes wage increases of 1%, 1.5%, and 1.5% in each respective

¹ <http://www.bls.gov/cpi/> - last visited January 31, 2007.

year of the agreement. Additionally, the City proposes to change the current December 28th effective date for increases to January 1, 2007.

In support of its position, the Employer presents demographic comparisons with eight Northeastern Ohio communities. This information places Elyria 6th in per capita income; 5th in median family income, and municipal income tax revenues; and 7th in both 2004 General Fund revenues and expenditures. In comparison to these communities, Elyria ranks a median 5th in top annual compensation for police patrol officers.

The City concedes that Elyria's starting and maximum wage rates are below the respective averages for the above communities. However, the City argues that when factoring longevity into basic wages, particularly at the maximum 20 years, Elyria is somewhat above the average. With supplemental pay, as well as longevity factored into comparisons, the City asserts that it ranks 5th among its cited communities.

The City projects the cost of the Union's 4.75% proposal as resulting in a \$40,090 starting rate in 2007; \$41,994 in 2008; and \$43,989 in 2009. Projected wage increases for 20-year Police Officers, including supplemental compensation and longevity benefits would be \$62,116 in 2007; \$65,379 in 2008; and \$68,773 in 2009.

In comparison, the Employer applies the terms of its settlement with its AFSCME bargaining unit – 2%-2.5%-3.0% in each respective contract year – to the EPPA agreement. That projection would result in a starting rate of \$39,037 in 2007; \$40,013 in 2008; and \$41,013 in 2009. With longevity benefits, EPPA members would receive wages of \$56,637 in 2007; \$58,053 in 2008; and \$59,794 in 2009.

The Employer states that it would like to alter the terms of its longevity agreement with the Union, but has been unable to do so. Accordingly, any increase in the front-end base wage rate presents a back-end maximum wage that is 20% higher over an employee's career. Moreover, the City argues that comparable communities cited in the SERB Benchmark data have a greater ability to pay than does Elyria. Even considering the Benchmarks, the Employer maintains that it is "right where it should be" when the extraordinary longevity benefit is considered.

Findings and Recommendations:

It is certainly true that the longevity benefit enjoyed by bargaining unit members impacts, and to some degree mitigates, the comparatively low wages paid to Elyria Police

Officers. As the City argues, any wage increase at the front end, i.e., entry-level, is exponentially increased after the Officer reaches 20 years of service.

However, it is also very clear that the welfare of the residents of the City of Elyria is jeopardized by its present documented inability to attract and retain qualified, experienced officers. It is equally clear that even with its considerable longevity incentive, the Employer is losing some of its most experienced policemen. Neither has it been successful in recruiting qualified new Officers.

Moreover, the increases proposed by the Employer can be expected to be below the rate of inflation, based on CPI-U data for the last 12-month period. Wage increases offered to the City's AFSCME bargaining unit – 2%-2.5%-3.0% in each respective contract year – fail to bring Elyria's entry-level wages to current Benchmark levels, and only bring maximum pay to slightly above current levels in the final year of the Agreement. The Factfinder cannot determine such an increase would constitute sufficient inducement to encourage qualified recruits to sign on with the Department, or stop experienced Officers from leaving for higher paying positions elsewhere.

On the other hand, the increases sought by the EPPA – 4.75% in each of the three contract years – is higher than might be considered reasonable, or even financially manageable by the Employer. Additionally, it should be considered that the pension contribution increases cited by the EPPA accrue to their own retirement benefits, notwithstanding that they constitute a decrease in take-home income for bargaining unit members. It should also be noted that while EPPA Officers enjoy good health care benefits, if at a considerable cost, the ability for employees to change or alter coverage is vested in a Committee largely controlled by the City's organized employees.

Accordingly, in consideration of the above, as well as a CPI-U for the December 2005 – December 2006 period – six months of which are included in this Agreement, as noted above, wage increases of 3.75% - 3.75% - 3.5% in each of the respective three years of the Agreement are recommended. Additionally, a July 1st effective date is recommended, commencing *July 1, 2006*.

2. Article 18.9 – Sick Leave

EPPA Proposal:

The Union proposes that bargaining unit members hired after July 1, 1985 receive pay

at retirement equal to one-half the value of up to 210 days of accrued sick leave. Those Officers hired before July 1, 1985 would receive full pay for up to 105 days, plus one-half the value of unused sick leave in excess of 105 hours.

Increases in the benefit would encourage bargaining unit members to utilize less sick leave, and thereby assist the Employer's efforts to reduce absenteeism.

City Proposal:

The Employer argues that its present two-tier payout for unused sick leave is the benefit afforded all Elyria employees, bargaining unit or non-bargaining unit. This system, it maintains, was negotiated several decades ago, and was consideration for wage increases, of which Union members have had the accrued benefit.

Only nine bargaining unit members remain under the old provision. All of those Officers will be eligible for retirement during the term of this Agreement. At that time, the sick leave buyout policy would be uniform throughout the City.

Findings and Recommendations:

As reflected in the language of § 18.9, the Parties entered into an Agreement that grandfathered sick leave buyback for current employees, but limited the benefit for bargaining unit members hired after July 1, 1985. The Union having received the benefit of that bargain in the form of enhanced wages for twenty years, there is no compelling reason to recommend that the City's benefit be abrogated.

There being no evidence that bargaining unit members utilize sick leave other than when appropriate and necessary, it cannot be found that increasing the retirement buyout benefit would reduce sick leave use. Accordingly, the EPPA's proposal is not recommended.

Current Contract Language Retained.

3. Article 31 - Senior Patrolman Proficiency

EPPA Proposal:

The Union proposes an increase in the Senior Patrolman Proficiency Allowance from the current \$500 per year to \$2,000 for senior patrol officers meeting the qualifications set forth in § 31.2 of the Agreement.

City Proposal:

The Employer opposes an increase in the Senior Patrolman's Proficiency allowance.

Findings and Recommendations:

The Union's proposal seeks to increase bargaining unit members' compensation. However, the Factfinder has recommended relatively substantial increases in the base wage rate, in the belief that under the present longevity structure, such increases would have greater impact on the City's recruitment and retention of quality officers than would more invisible compensation such as the existing allowance or that proposed by the EPPA below.

*Current Contract Language Recommended***4. New Article – Firearms Proficiency Allowance****EPPA Proposal:**

The Union proposes a new provision as Article 34 of the Agreement, providing for a \$1,000 allowance in each of the Agreement's three years, to be paid to bargaining unit members that meet or exceed the annual firearms proficiency certification mandated under ORC § 109.91.

City Proposal:

The Employer opposes the EPPA's proposal, arguing that the certification is a job requirement, for which compensation is not warranted.

Findings and Recommendations:

As the City points out, firearms proficiency certification is a statutory requirement for peace officers within the State of Ohio. As noted above, the Factfinder has recommended relatively substantial increases in the base wage rate, in the belief that such increases have greater impact on the City's recruitment and retention of quality officers than would more invisible compensation in the form of proficiency allowances.

5. New Article - Support Car Program**EPPA Proposal:**

The Union proposes language that would memorialize and expand the City's current support car program. Under the EPPA's proposal, all Officers residing within Lorain County with over two years of service – five years for newly-hired Officers – would be permanently assigned support cars. Officers living outside Lorain County, or declining a support car would be ineligible. Under the Union's proposal, should the City fail to provide eligible bargaining unit members with a support car, it would be required to pay a weekly stipend at

the IRS *Annual Lease Value Table* rate.

The EPPA argues that the program would make logistical transfers more expedient and result in faster responses to emergencies, increasing public safety. Moreover, Officers assigned permanent vehicles take a proprietary interest in their maintenance and upkeep, thus extending their use-lives. The Union argues that a number of jurisdictions have similar programs, including the Lorain County Sheriff's Office and the State Highway Patrol.

City Proposal:

The City opposes any contractual obligation requiring it to provide support cars.

Findings and Recommendations:

While the advantages of a support car program, as cited by the EPPA, are recognizable, so too are its potential problems, in both practical application and creation of a contractual requirement. Requiring the City to provide a functioning vehicle to each of its Patrol Officers is, in itself, a major and potentially burdensome obligation. Additionally, under the EPPA's proposal, the Employer would be under an additional obligation to assure that replacement vehicles were ready and available, or face the requirement to pay the IRS lease rate to Officers whose vehicles were out of service.

Against this, there is little benefit to the City. Under its current policy, support cars are assigned to experienced officers living in or near the Elyria City limits. They are therefore providing deterrent and response benefits which vehicles under the charge of Officers living in the County would not.

Accordingly, the Union's proposal cannot be recommended.

6. New Article – Equitability

EPPA Proposal:

The Union proposes a "me-too" provision affording the EPPA an opportunity to reopen negotiations regarding any "enhanced economic benefit" received by any other safety bargaining unit in the City.

The EPPA argues that, given what it characterizes "the already more competitive fire union compensation package", the EPPA should be permitted to reopen negotiations with the Employer on any more favorable wage/benefit provisions negotiated by the fire bargaining unit for 2007-2009.

City Proposal:

The Employer is opposed to both a “me, too” article and an entitlement to reopen negotiations. The Employer believes that each bargaining unit must negotiate independently for itself and cannot rely upon the negotiations of another bargaining unit.

Findings and Recommendations:

While internal parity is a statutory consideration for neutrals in public sector negotiations in Ohio, the EPPA’s equitability proposal is beyond the reasonable exercise of the fact-finding office. Rather than working toward more stable labor relations, recommendation of such language increases the inter-departmental tension existing between safety forces. Additionally, the negotiating histories of the two units differ; *quid pro quo* arrangements of long standing have resulted in differing rates, requiring independent negotiation. Accordingly, the EPPA’s proposal is not recommended.

SUMMARY

FINDINGS AND RECOMMENDATIONS

1. **Article 12 - Wages**
3.75% - 3.75% - 3.5% in each of the respective three years of the Agreement;
effective July 1st
2. **Article 18.9 – Sick Leave**
Current Contract Language Recommended
3. **Article 31 - Senior Patrolman Proficiency**
Current Contract Language Recommended
4. **New Article – Firearms Proficiency Allowance**
Not recommended
5. **New Article - Support Car Program**
Not Recommended
6. **New Article - Equitability**
Not Recommended.

Tentative Agreements Memorialized Herein

Preamble/Purpose

Article 5 B (33) - Fair Share Fee

Article 17, Hospitalization

Article 16, Clothing Allowance

Article 18, Sick Leave

New Article, Sick Leave Incentive

Article 23, Grievance Procedure

New Article, Corrective Action

Article 24, Bill of Rights

Article 29, Duration

Article 32, Labor Management Agreement



Gregory James Van Pelt

Gregory James Van Pelt

Respectfully submitted this 31st day of January, 2007
At Shaker Heights, Cuyahoga County, Ohio