STATE EMPLOYMENT
RELATIONS BOARD

2007 MAR 30 A 11:52

In the Matter of Factfinding Between Ohio Patrolmen's Benevolent Association and The City of Brecksville, OH	SERB Case Numbers: 06-MED-09-1122, 1123 Before: Harry Graham

APPEARANCES: For OPBA:

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INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board a mediation session was held with the parties. It was fruitless. Subsequently a day of hearing was had. The parties were provided complete opportunity to present testimony and evidence. The record was declared closed at the conclusion of the hearing in Brecksville on February 28, 2007.

ISSUES: The parties are in agreement over the issues that are in dispute between them. Those issues are:

1. Health Insurance
2. Wages
3. Sick Leave Payout
4. Compensatory Time
5. Association Representation
6. Hours of Work
7. Arbitration Procedure
8. Overtime Pay
9. Vacation
10. Longevity
11. Disability
12 Miscellaneous
13. Clothing Allowance
14. Training/Schooling
15. Duration

ISSUE 1, HEALTH INSURANCE: As is set forth in more detail below, the City is proposing substantial changes in health insurance. Those changes are unnecessary according to the Union. It proposes that health insurance remain substantially unchanged. Under its proposal the $50.00 per month maximum employee payment towards premium would remain unchanged. The trigger level for increasing employee premium payments would be 7.2% for families and 7.5% for individuals under its proposal.

The Union is aware that costs for health insurance have increased substantially in the United States. In Brecksville there have been wide swings in health insurance costs. (Un. Ex. 13). For instance, in 2001 such costs rose 23% over 2000. In 2005 they declined 19%. The five year moving average cost increase through 2006 was 5%. The same is projected for 2007. That is a modest number compared to experience elsewhere in

the nation and does not justify the increases in employee payments being sought by the City the Union insists.

Were the proposals of the City to be implemented a person on the family health insurance plan could pay as much as $2293.00 per year (Un. Ex. 12) for health insurance. That is simply unjustified in view of the fact the City has not experienced extraordinary increases in health insurance costs according to the Union.

Comparison data supports its position the Union asserts. Independence, adjacent to Brecksville, offers two health insurance plans. Plan A calls for premium payments by employees of $35.00 per month for single and $86.00 per month for family coverage. Plan B, less comprehensive, calls for no (0) premium payment. Elsewhere in the Cleveland metropolitan area some communities call for employee premium payments, eg. Mayfield Heights, Pepper Pike, Solon, and some do not, eg. Beachwood and Lyndhurst. The Employer cannot support its proposal for premium payment increases to be made by employees the Union contends.

Not only does the City propose to increase premium payments being made by members of the bargaining unit, it proposes to alter the benefit structure as well. Its proposed changes would result in substantially less desirable coverage and the employee paying more for it. That is an insupportable

proposition according to the Union. It proposes the benefit structure of the health insurance plan remain unchanged.

POSITION OF THE EMPLOYER: As noted above, the City is proposing vast changes in the health insurance program. It asserts the cost of the existing health insurance plan is "prohibitive." To deal with that situation the Employer proposes that Employees pay ten percent (10%) of the premium. It is also proposing very significant changes in plan design. In short, the City proposes to change from the current benefit structure to an 80/20 plan with $200/$400 deductibles. These changes address what the City characterizes as its difficulty with payment for health insurance.

DISCUSSION: In order for a party to secure a recommendation entirely or partly on its behalf its proposal must be supported by evidence. The proposal of the City on this issue is absolutely not supported by evidence. The City is proposing massive changes in plan design and payment of premiums without basis in fact. Close attention must be given to Union Exhibit 13, the "City of Brecksville Summary of Medical Costs." It does not show health insurance costs in the City to be out of control or prohibitive. Costs have varied widely since 2000. In some years the "Net Medical Cost" has decreased from the prior year, eg. 2005 which was

lower than 2004. In other years the reverse has occurred, eg. 2006 over 2005. That does not reveal the entire situation. Note well the last line of Union Exhibit 13, "Number of Covered Employees." It has shown an increase in recent years, from 95 full time employees with family coverage in 2003 to 113 expected in 2007. Single employees have been largely unchanged but are expected to increase by 1 from 2003 to 2007. It should be expected that as numbers of covered people increase the cost to the Employer would increase as well.

Similarly, comparison data does not support the position of the Employer whatsoever. Excluding Eastside communities such as Beachwood, Solon, Mayfield Heights and Lyndhurst and restricting comparisons to the Westside communities urged appropriate by the City, eg. Independence, Brook Park, Middleburg Heights etc. shows that full employer payment of health and dental coverage remains common. Not a single community, not one, not even those in such financially difficult circumstances as Parma, requires employees to make the payments towards health insurance proposed by the City in this proceeding. Based upon the experience of the City with respect to health insurance costs and the comparison data which do not support its proposal whatsoever the proposal of the City must be rejected.

That does not automatically call for a recommendation

that the proposal of the Union be adopted in toto. The Union proposes that the $50.00 per month maximum payment by employees remain unchanged for the duration of the Agreement. That is unreasonable in the current health care environment. It is recommended that the maximum amount payable by employees per month be $60.00 in 2007, (following the first payroll period after ratification of the Agreement by both parties), $70.00 in 2008 and $80.00 in 2009. Costs in excess of those amounts should be paid by the Employer. It is recommended that the maximum Employer payments towards health insurance be $350.00 per month in 2007, $400.00 in 2008 and $435.00 in 2009 for single coverage and $1,100.00 per month in 2007, $1200.00 in 2008 and $1250.00 in 2009 for family coverage. It is recommended that the benefit plan design be changed to Option 1 on Employer Exhibit 4. Any required premium payments above those resulting from the combined employer and employee payments above are the responsibility of the Employer. Article 35, Section 5 should reflect the benefits termed "Option 1" on Employer Exhibit 4. It should also indicate that those benefits will not change for the duration of the Agreement.

ISSUE 2, WAGES

POSITION OF THE UNION: The Union proposes there be a four percent (4.0%) wage increase. It would be retroactive to

January 1, 2007 and be effective for each year of the Agreement. There is a rank differential between patrol officers and sergeants of 12%. The Union proposes it be increased to 13%. As is seen below, the City is proposing additional time to top step for patrol officers and sergeants. The Union is opposed to that proposal.

The Union points out that the City is in excellent financial health. It has an Aa1 credit rating from Moody's, one of only seven Ohio communities with such a high rating. Further, it had an undesignated General Fund balance at December 31, 2005 of about $7 million. That represented 55% of the General Fund expenditures. There is no question of inability to pay.

The Union urges that a comparison group of 15 suburban Cleveland communities be considered appropriate. Ranging from the west and southwest parts of the metropolitan area to the east side, eg. Beachwood and Lyndhurst, the Union contends that Brecksville officers should be paid at or near the top in the region. Adoption of its proposal will accomplish that objective. As the City can easily meet its demands it should be recommended according to the Union.

POSITION OF THE CITY: The City proposes there be wage increases of 2.0% per year. It also proposes there be two more steps in the pay plan so that new employees take four

(4) years to reach the top step.

The City uses a more restrictive comparison group than does the Union. Its comparison communities are the west and southwest suburbs of Cleveland. Using that group shows that Brecksville officers are the highest paid. When adding other benefits available, eg sick pay and longevity, they are at or close to the top.

The City acknowledges that wage increases in the current round of bargaining have been in the range of 3+%. Given the present standing of Brecksville officers in the area a wage increase of that magnitude is unwarranted the City asserts.

DISCUSSION: It is the case that Brecksville officers are at or near the top when comparing their pay to their counterparts in the west and southwest suburbs of Cleveland. Comparison with East side communities, eg. Beachwood, Pepper Pike, Lyndhurst is inappropriate. The standing of the Brecksville PD in the area is good. That said, there is no reason for the City to believe it can secure a 2.0% wage increase. No other reported settlement is in that range, not one. Settlements are in the range of 3.5%. Some are 4.0%. One, Bedford Heights, is 3.0%. The cluster of settlements is at 3.5%. It is recommended there be 3, 3.5% wage increases for patrol officers and sergeants. The increase for 2007 should be retroactive to January 1, 2007. All overtime hours

and other wage related payments, eg. holiday pay etc. should reflect payment at the increased rate.

The Union did not show any cogent reason why the rank differential should be increased. It is not recommended.

The City is correct to indicate that time to top step is short in Brecksville. It is recommended there be one (1) additional step from hire date to top step. That should take effect January 1, 2008. In 2006 the differential between Patrolman Grade III and Patrolman Grade I was $14,793. The yearly differential resulting from the forthcoming wage increase should be adjusted to account for the one extra step. All current employees should be grandfathered.

ISSUE 3, SICK LEAVE PAYOUT

POSITION OF THE UNION: There is a benefit in the Agreement (Article 22, Section 4) that provides for pay to employees for sick leave in excess of 120 days. This benefit has been in the Agreement "forever" according to the Union. The City seeks to alter the benefit. No justification can be made to do so according to the Union. The benefit extends to all in City service. As of December 29, 2006 the City obligation for the Sick Leave payout was $188,675. The Police Department, including non-bargaining unit employees, accounted for $64,547. It cannot be said that the cost of this benefit is exorbitant nor that members of these bargaining units should

lose it according to the Union.

Article 23, Section 13 references a benefit for bargaining unit members who might contract AIDS as a result of their employment with the City. No reason exists to alter that benefit in the opinion of the Union.

POSITION OF THE EMPLOYER: As referenced above, the City proposes to eliminate the 100% annual buyout of sick leave accrued over 120 days. It proposes that sick leave be permitted to accrue an unlimited amount and that 1/3 of three hundred (100) days be paid upon retirement. It also proposes that the special AIDS benefit be eliminated as protection for that affliction is provided through the retirement system.

The City contends that the cost of the sick leave payout has become burdensome. It is about $189,000 as shown above. Further, the benefit is unusual. Examination of Westside suburbs, eg. Parma, Strongsville, Berea, Brook Park and Independence do not show the payout made in Brecksville. With regard to this benefit, the City is unique. It does not want to be unique. As no other community makes this payment and the cost to the City is high, it should be altered as it proposes according to the City.

There is no need for the AIDS benefit in the Agreement as it is provided under the pension system. As that is the case it should be deleted the City urges.

DISCUSSION: This is a benefit that goes back prior to the institution of collective bargaining in the City. It is unique to Brecksville as far as may be determined by the exhibits on the record. That does not require it be deleted or altered in the manner proposed by the City. Its history argues against that occurring.

The cost of this benefit in the police department is approximately $65,000 including non-bargaining unit personnel as well as members of the bargaining unit. The total cost to the City of about $189,000 shows this benefit extends to all employed. The Union sought, and secured, codification of this benefit in the Agreement. If the City finds it excessive now, it may deal with non-represented employees and reduce it. In this situation the City has not proposed any consideration for altering a longstanding benefit to bargaining unit members. It does not want to purchase its desired change with an abnormally high wage increase. It does not want to increase other benefits found in the Agreement. It merely seeks what it seeks and does not propose to pay for it. That is not the way negotiations work. No change in the sick leave payout is recommended.

The proposal of the City with respect to AIDS is not recommended. No persuasive reason for it was proffered.

ISSUE 4, COMPENSATORY TIME

POSITION OF THE UNION: The Union proposes that Article 18, Section 5 dealing with Comp Time remain unchanged but for its proposal. It proposes that employees be given the option to liquidate their comp time once per year. Its Exhibit 2, covering mainly east side communities but also Independence, contiguous to Brecksville, shows that it is commonplace for employees to be permitted to liquidate their comp time. The Union also proposes that Comp Time use be consistent with the Fair Labor Standards Act and that usage may be denied if such usage would cause shift staffing to drop below three. This would include Captains, Lieutenants, Sergeants and Patrol Officers.

POSITION OF THE EMPLOYER: The City proposes to strike Sections 5, 6 and 7 from Article 18. It asserts that suits involving comp time use (arising from regulations implemented by the Socialists in the Clinton Administration) have become commonplace. Thus, it requires change to comport with the Fair Labor Standards Act and regulations. Pay will be made in lieu of Comp Time when an employee works overtime.

The City also proposes that if an employee does not answer a telephone call regarding overtime that non-answer be considered as a refusal.

DISCUSSION: Union Exhibit 2 shows that comp time liquidation is common. The Exhibit is incomplete in that the only

community near to Brecksville shown on the Exhibit is Independence. There is insufficient evidence to support the proposal of the Union regarding liquidation of comp time.

Similarly, there is insufficient evidence to support the proposal of the City regarding elimination of Sections 5, 6 and 7 of Article 18. The Agreement presently references compliance with the Fair Labor Standards Act. It is recommended the current terminology of Article 18, Section 5, 6 and 7 continue unchanged with the proviso that when an officer must be called-in due to insufficient staffing use of comp-time may be denied. The concept of insufficient staffing refers to a situation when the number of officers on a shift, including patrolmen, sergeants, lieutenants and captains, is less than three.

The proposal of the City with respect to unanswered phone calls counting as a refusal of overtime is recommended to the parties.

ISSUE 5, ASSOCIATION REPRESENTATION

POSITION OF THE UNION: The Union proposes that the City pay two patrol officers and one sergeant for time spent on negotiations during their regularly scheduled hours. It also proposes that Union Directors be granted up to five days per year to attend Union-related conferences and meetings.

POSITION OF THE EMPLOYER: The City is opposed to the Union

proposal. Payments of the nature set out by the Union have been made in the past on an ad-hoc basis. There has been no difficulty with this arrangement and no language should be put into the Agreement.

DISCUSSION: The Union did not provide sufficient rationale in support of its proposal. It is not recommended.

ISSUE 6, HOURS OF WORK

POSITION OF THE UNION: The Union proposes that when off-duty employees are called in they should receive a minimum payment of three or four hours depending upon the circumstances. The Union points out that such a payment is provided for in Article 27 dealing with Court Time. The principle of this payment is well established. As such, it should be extended to call-in as well.

POSITION OF THE EMPLOYER: The City proposes to delete Section 1 of Article 17, Hours of Work. That Section defines a work day as constituting eight regularly scheduled hours. The definition prevents the City from changing the schedule to 4 10 hour days or a 12 hour day schedule. That should not be the case according to the City.

DISCUSSION: At the hearing the City did not indicate it had any desire to change the present eight hour work day. There is no pressing need for the proposed change.

Similarly, the foundation for the proposal of the Union

which links call-in pay with court time is shaky. There is no particular linkage that is apparent.

No change is recommended in Hours of Work.

ISSUE 7, ARBITRATION PROCEDURE

POSITION OF THE UNION: The Agreement presently provides that if a grievance is proceeding to arbitration that the parties may mutually agree upon an arbitrator. If they fail to do so the are to have recourse to the American Arbitration Association. That procedure has worked and no need to change it exists according to the Union.

POSITION OF THE EMPLOYER: The City proposes that the present system for securing an arbitrator be changed. Rather than having recourse to the American Arbitration Association the City urges that there be created a permanent panel of arbitrators. Such panels are commonplace. They reduce the expense of paying for a list of arbitrators from the Arbitration Association. It may also serve to speed up the process. Consequently the change should be recommended according to the City.

DISCUSSION: The City has a point. Permanent panels (an oxymoron if ever there was one) are indeed commonplace. They are seen widely in the region and in the nation. They reduce the cost of securing a list from AAA. It is recommended the parties form a permanent panel of five arbitrators.

ISSUE 8 OVERTIME PAY

POSITION OF THE UNION: The Union has an extensive proposal in Article 18, Overtime Pay. It proposes changes in Sections 3 and 4 that would give priority to bargaining unit members when overtime is needed. As the Union relates the situation the Employer is presently using part-time employees to perform work that the Union regards as properly within the province of the Bargaining Units.

POSITION OF THE EMPLOYER: Both overtime and comp time are discussed in Article 18. (Comp time was dealt with in Issue 4 above). Dealing strictly with overtime, the City proposes that a small phrase be inserted in Section 3. That phrase is "being regularly schedule (sic) to work." Inclusion of that phrase will give the City more leeway to utilize part-time employees in lieu of full-time employees. Such flexibility is desirable in its operations in the opinion of the City.

DISCUSSION: The proposals of both parties are understandable. Of course the Union wants more restrictions on use of non-bargaining unit, part-time employees. Conversely, the Employer wants increased flexibility to deploy such employees. Neither party showed that this was a pressing problem in Brecksville. Neither provided convincing rationale to prompt a recommendation on its behalf. It is recommended that no change in the overtime provisions of Article 18

occur.

ISSUE 9 VACATION

POSITION OF THE UNION: The Union proposes that Article 21, Section 5 be altered to provide that the Chief or his designee not be able to deny vacation time as long as certain requirements in Section 6 are met. These are that in the event platoon size is increased to six, two people be permitted to be on vacation counting captains, lieutenants, sergeants and patrol officers. As the Union relates the history of vacation leave in Brecksville there is a certain arbitrary quality about the manner in which it is granted, or more accurately, not granted. It is this arbitrary element the proposal of the Union is directed at.

POSITION OF THE EMPLOYER: The Employer opposes the proposal of the Union. It points out that should it be adopted it might result in one patrol officer and a captain or even two captains being on a shift at the same time. This should not occur in its view.

DISCUSSION: At the hearing the Union pointed to one instance of what it regarded as an improper denial of vacation time. One instance is insufficient to prompt a change in the Agreement. The proposal of the Union is not recommended.

ISSUE 10, LONGEVITY

POSITION OF THE UNION: Without going into the detail set

forth in the proposal of the Union (page 10) it suffices to indicate that the Union is proposing an increase in longevity pay. Under its proposal payments would increase from the current $125.00 per year of service to $175.00 per year of service.

POSITION OF THE EMPLOYER: The City contends the proposal of the Union is excessive. It is unwarranted and not supported by comparison data. It should be rejected the Employer urges.

DISCUSSION: As is often the case, the data do not fully support the position of the Employer or the Union. It is mixed. Certainly the present payment of Brecksville is not out of line. There is a tendency for payments of this sort to increase over time. It is recommended the current $125.00 payment increase to $150.00 effective January 1, 2009. The current $10.42 payment referenced in Article 31, Section 1 should increase to $12.00 the same date.

ISSUE 11, DISABILITY

POSITION OF THE UNION: Article 25 deals with disability. It presently provides that disability payments commence on the sixth day an employee is off work due to injury. Such payments are to be authorized by City Council. The Union proposes the six day waiting period be eliminated and that the discretion provided City Council to authorize, and presumably not authorize, disability payments be eliminated.

POSITION OF THE EMPLOYER: The City is proposing that there be an initial 90 day limit on disability payments. It points out that the present Agreement has no limitation on the duration of disability payments. In fact, limitations are common. Some are greater, some are less. As limitations are the norm and none is in the Agreement in Brecksville this situation should be addressed in the opinion of the City.

DISCUSSION: The City is correct that limitations on disability pay are the norm. It is recommended that the 90 day **initial** disability period proposal of the Employer be adopted. That period should be subject to extension. It is also recommended that disability leave be effective immediately. A waiting period for people experiencing disability is harsh. That exceptions to the six day waiting period may be made is contemplated by the final sentence of Article 25, Section 1 of the current Agreement. As that is the case, the six day waiting period should be eliminated and disability benefits should begin immediately. The first sentence of Article 25, Section 1 should read:

> When an employee is injured, but not permanently disabled in the line of duty through no negligence of his own, while actually working for the Employer, he shall be eligible for a pay leave effective the first day he is off work from said injury

No other changes are recommended.

ISSUE 12, MISCELLANEOUS

POSITION OF THE UNION: The Union proposes that members of both bargaining units be permitted to use the Brecksville Community Center. It also proposes there be instituted a training stipend and that officers be placed on permanent shifts.

POSITION OF THE EMPLOYER: The City is opposed to all aspects of the Union proposal in Article 32. It points out that officers have a training facility at police headquarters. There is no justification for the other parts of the Union proposal the City contends.

DISCUSSION: In the Cleveland Plain Dealer of Sunday, March 18, 2007 at Page G3 (Business Section) is found an article "Health care costs up 8 percent in 2006" Included in the article is the comment that "more employers are implementing strategies that help employees maintain a healthy lifestyle as a way to bring down costs." The article continued to report the findings of Watson Wyatt, actuaries and consultants, that "the data showed that companies the provide programs that help employees manage their health have lower health care growth rates than companies that choose to shift more of the cost to workers." At hearing it was represented by the Union that the Brecksville Community Center provides a larger range of fitness activities than does the training room at the police station. As that is the case the proposal

of the Union has cogency. Officers should be permitted to use the Community Center upon payment of the same annual or per-use fee as is made by citizens of Brecksvile. No other change is recommended in Article 32.

ISSUE 13, CLOTHING ALLOWANCE

POSITION OF THE UNION: As might be expected the Union is seeking an increase in the clothing allowance. Presently the City pays $700.00 per year to a "Clothing Maintenance Account." The Union proposes that be increased to $800.00. The present $450.00 per year for cleaning etc. found in Article 33, Section 3.4 should be increased to $550.00 per year according to the Union. These increases will account for normal inflation in its view.

POSITION OF THE EMPLOYER: The City proposes that there be a payment of $1200.00 for the clothing allowance/maintenance account and that the current voucher program be eliminated. It indicates that problems with this program have developed and that allegations of fraud surround it. As that is the case, it should be eliminated in the City's view.

DISCUSSION: The proposal of the City contemplates a change in the manner in which Brecksville officers receive the clothing allowance and an small increase in the total amount payable. Pay will made directly to officers under the proposal of the City. It is recommended that the proposal of the City in

Article 33, Clothing Allowance, be adopted.

ISSUE 14, TRAINING/SCHOOLING

POSITION OF THE UNION: The issue here is at Article 45, Section 2. The Agreement presently provides that "All costs associated with such training (fees, tuition, supplies, and room and board) shall be paid for by the Employer." Under this language the City has been paying for a lunch when officers are at a training session. The City seeks to discontinue that practice and the Union is opposed. The cost is small. This benefit has been in the Agreement for many, many years. There is no reason to delete it in the Union's view.

POSITION OF THE EMPLOYER: As noted above, the City proposes to take away the lunch payment when officers are at training. It points out that when on-duty officers secure lunch at their own expense. As that is the case, they should do so when at a training session the City urges.

DISCUSSION: This benefit has been in the Agreement for a long time. Why the City would want to eliminate it is mysterious. It is not asserted there is any financial hardship to the City in providing this benefit. It is not asserted that there is any sort of abuse associated with it. There is no good reason to eliminate the lunch payment made to officers when attending training. The proposal of the City is not

recommended.

ISSUE 15, DURATION

The Union proposes a three year Agreement, retroactive to January 1, 2007 and expiring December 31, 2009. At hearing the Employer expressed an interest in a one year Agreement. The expired Agreement has a three year term. It was represented by the Union that the practice in Brecksville is for three year Agreements. No good reason was advanced to change the practice. It is recommended that there be a three year Agreement, retroactive to January 1, 2007 and expiring December 31, 2009.

Signed and dated this _____ day of March, 2007 at Solon, OH.

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Harry Graham
Factfinder