

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

**FACT-FINDING PROCEEDING
06-MED-09-1140**

**Ohio Patrolmen's Benevolent Association,
Union**

and

**City of Englewood,
Employer**

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STATE EMPLOYMENT
RELATIONS BOARD

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

**Daniel N. Kosanovich
Issued: March 23, 2007**

Appearances:

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REPORT AND RECOMMENDATION

I. Background

The bargaining unit in this case consists of all full-time police officers employed by the City of Englewood, Ohio. There are approximately 13 members of the bargaining unit. The predecessor collective bargaining agreement became effective on January 1, 2004 and expired by its terms on December 31, 2006.

The OPBA and the City of Englewood began bargaining on November 7, 2006. They engaged each other in negotiations on November 16, December 8, and December 12, 2006. The evidence demonstrates that the parties reached agreement on all outstanding issues save three issues. The unresolved issues involve wages, health insurance, and holidays.

On January 24, 2007, based on the withdrawal of Ann C. Wendt, the State Employment Relations Board, appointed the undersigned to serve as the fact-finder. The hearing was scheduled and conducted on February 26, 2007 at the City of Englewood Police Department.

At the outset of the hearing, the offer to mediate was made, but the offer was declined. Both parties were given ample opportunities to submit all information and evidence in support of their respective positions during the course of the hearing. At the conclusion of the hearing, the parties agreed that the fact-finding report would issue on March 23, 2007.

II. Criteria

In compliance with the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Revised Code, Section 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 and 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 normal standards of public service;
4. Lawful authority of the public employer;
5. Stipulations of the parties; and,
6. Such factors not confined to those set forth above which are normally and traditionally taken into consideration.

III. Findings and Recommendations

Issue 1 – Wages

OPBA's Position

The OPBA is proposing a 3.5% base rate increase in the first year (effective January 1, 2007) of a 3-year agreement. The police officers are also seeking a 3.5% wage increase in the second year of the contract. Finally, in the third year of the agreement, the OPBA is seeking a 3% increase in wages.

The Union maintains that the City has the financial wherewithal to both administer and implement the wage increase proposal. At the fact-finding hearing, the OPBA directed the undersigned's attention to the City's 2005 Audited Financial Statement.¹ More specifically, the Union showed that the Audited Financial Statement indicated that the City's net assets have increased by 1.5 million dollars; general fund revenues grew faster than expenses; and the police fund increased \$244,000 in 2005. In addition, the general fund revenues were reported to be 7.8 million dollars and expenditures to be 1.9 million dollars. Furthermore, the cash position of the City demonstrates financial stability. Its economic outlook is prosperous. Finally, the City's unreserved and unencumbered fund balance far exceeds the recommended unencumbered fund balance for a municipality such as the City of Englewood.

The Union also submitted comparables for the undersigned's consideration. The OPBA argued that the total compensation for a police officer should be compared to the various jurisdictions among Montgomery County. Such a comparison reveals that the City of Englewood police officers total compensation package is 98% of the average total compensation for all Montgomery County police officers bargaining units. Thus, the argument goes, a 3.5% increase in the first two years and a 3% increase in the third year of the contract is a fair wage increase based on the comparables.

The OPBA also points to its history of bargaining with the City of Englewood. Since 1994, police officers have averaged 3.88% in yearly wage increases. By comparison, the Union's proposal is slightly less than the average wage increase over the past 16 years.

¹ The 2005 audited financial statement is the most recent audited financial statement for the City which issued on July 20, 2006.

One point of consideration raised by the police officers in support of their wage increase was that the City is seeking the additional premium contributions from the police officers health insurance. If the City's proposed increase in health insurance premiums charged to the police officers is offset against the wage increase, said wage increase would be below market value which the Union contends is 10% over three years.

City of Englewood's Position

The City of Englewood is offering a 2.75% wage increase in 2007, a 2.9% wage increase effective 2008, and a 3% wage increase in 2009. The City also maintains that its position on the wages is a fair position.

With respect to the ability to pay issue, the City maintains that it does not contest the facts set forth in the 2005 Audited Financial Statement nor has it raised an inability to pay as a defense in negotiations. The City's ability to finance and administer the Union's proposal is a given in these proceedings. In drawing comparisons between the City of Englewood's police department and other police departments in Montgomery County, the City argues that a realistic comparison should take into account the population of the municipality. Englewood has an approximate population of 12,000 people. If a comparison was done between those municipalities with 10,000-20,000 person populations, one finds that Englewood compares favorably. Jurisdictions with this population include Clayton, Miamisburg, Vandalia, and West Carrollton. An Englewood police officer's pay (at the top rate) exceeds Clayton, as well as Miamisburg and Vandalia. Also, it must be noted that a majority of the bargaining unit is at the top part of the rate scale. Thus, comparisons would dictate that the City's wage increase offer is justified.

Moreover, the City has managed to attract and maintain a very high level of skill sets with the wage structure it has adopted. It is unnecessary to increase the wages significantly more than those being offered by the City to continue this trend. Finally, the CPI for 2006 represents about a 2% increase in 2006 over 2005. Therefore, according to the City, it is unnecessary to offer wage increases in the 3.5% range.

RECOMMENDATION

Applying the criteria set forth above in Section II of this Report leads to the conclusion that the OPBA's wage proposal is reasonable and should be adopted. **Therefore, it is recommended that the Englewood police officers receive a 3.5% across the board base wage increase effective January 1, 2007; that the bargaining unit receive a 3.5% across the board base wage increase effective January 1, 2008; and that the police officers receive a 3% across the board base wage increase effective January 1, 2009.**

The evidence adduced at the hearing indicates that the City has wherewithal to finance and administer the OPBA's wage proposal. This fact is a given in this case. Moreover, the history of the collective bargaining between the parties herein demonstrates that the police officers have received average wage increases of 3.88% per year since 1994. This factor is significant because it indicates that the City and the OPBA have agreed that wage increases in the range between 3.5% and 4% is reasonable. Such wage increases have served to attract and retain the highest quality police officers. The bargaining history sets the level of expectations for parties.

The Union asserts that the best comparison with other bargaining units in Montgomery County is on the basis of total compensation. Comparing total

compensation for police units in all jurisdictions in Montgomery County with the City of Englewood, reveals that the City of Englewood officers rank at the 98.1% level of the average. The City, on the other hand, contends that the best comparisons are done with jurisdictions of similar population. Comparing cities with populations between 10,000 and 20,000 people culls out most of the jurisdictions in Montgomery County, and leaves the parties with Clayton, Miamisburg, Vandalia, and West Carrollton as comparables. Using the State Employment Relations Board Clearinghouse Benchmark Report dated August 10, 2006 in comparing top level salaries of police officers within the jurisdictions of Clayton, Miamisburg, Vandalia, and West Carrollton, the Employer contends that the City of Englewood police officers receive a higher rate of pay than all of the police officers in those jurisdictions except Vandalia.

Scrutiny of the comparisons offered by the parties for the consideration at the fact-finding hearing yields the conclusion that the Englewood officers are well paid; however, the current pay does not exceed the Vandalia police officers, West Carrollton police officers, or Miamisburg police officers. Once again, the comparables support a conclusion that the OPBA's wage proposal is reasonable.

Issue 2 – Health Insurance

City of Englewood's Position

The City of Englewood seeks two changes in Article XXI of the collective bargaining agreement. The first change is to the increase of the premium contribution by the employees, which would be addressed in Article XXI, Section 1 of the agreement. The second change is Article XXI, Section 4. The City is seeking to eliminate language

which requires negotiations with the Union before coverage changes can be implemented. (Each of these proposals will be treated separately in this Report.)

With respect to the proposed change in premium contributions on behalf of the employees, the City is seeking to change the current contribution level of employees from 10% to 12% in calendar year 2008, and 15% in calendar year 2009. In support of its contention, the City asserts the following.

“The annual increase in healthcare premiums during the term of the contract exceeds 8%. The annual insurance roulette wheel makes it impossible to forecast with any certainty the actual financial cost to the Employer. However, the health insurance is the number one expenditure that has risen without any control. Additional contributions is simply an acknowledgement that all employees must share financially to receive this benefit” (City’s Pre-hearing Statement).

In support of its position, the City submitted documentary evidence to indicate that in each year since 2001, the cost of health insurance has increased except in 2007. 2007 is treated as an anomaly resulting from the effort of United Healthcare to “buy back” the City’s business. In years 2001, 2003, and 2006, the City experienced double digit increases in premium levels for health insurance, the highest of which was 17% (2006). In 2002, 2004, and 2005, the City experienced single digit increases in healthcare premium costs.

In addition, at the hearing, the Employer submitted documentation reflecting comparable levels of employee contributions toward health insurance for jurisdictions within Montgomery County. The record reflects that the contribution levels for employees range from 0% to 15%.

According to the City, it is necessary to fend off future risks by having employees recognize the need to maintain premium levels that are reasonable. This can be accomplished by increased employee premium contributions.

OPBA's Position

At the outset of the Union's presentation at the fact-finding hearing, the point was made that the comparables used by the City for health insurance purposes was different than the comparables used by the City to deal with the wage issue. Thus, the argument goes, the comparables are not persuasive. The only jurisdiction from the comparables used in wages, which has an 85% employer and 15% employee contribution premium, is Huber Heights, and that is for a small group of employees hired after 2003.

In addition, the OPBA points out that the increases in premium contributions have vacillated and indeed in 2007, the premium level was reduced by 12%. By good fortune or proper management or a combination of both, the City has been able to maintain a relatively reasonable level of increased premiums for health insurance over the past six years. There simply is no basis offered by the City to change the collective bargaining obligation of the employees to contribute more than 10% toward the premium for health insurance.

RECOMMENDATION

As the Employer asserts, changes in the cost of healthcare from year to year are inevitable, the City has not experienced increases in healthcare premiums that other municipalities and jurisdictions have experienced. As noted above, the City's own documentation indicates that three of the six years of increases were realized between 2001 and 2007. Those increases were single digit increases. In addition, in 2007, whether

it is an anomaly or not, the premiums were reduced by 12%. As indicated in the 14th Annual Report on the Cost of Healthcare Insurance produced in 2005 by the State Employment Relations Board, cities with a population of less than 25,000 had an annual percentage employee contribution toward health insurance of 9.8%. Moreover, the same report indicates that when employees pay a portion of premium costs for medical coverage, the contributions average \$100.67 for family coverage. This amounts to approximately 10.4% of the cost for the monthly family premium.

Given the circumstances, the City has failed to produce a compelling reason to increase the employee premium contribution level during this round of negotiations. Therefore, the recommendation is to maintain the status quo. It is recommended that Article XXI, Section 1 read as follows: **“The City shall have a plan of Health and Dental care available to the employees covered hereunder and such plan of benefits shall be uniform for all non-exempt employees of the City. The City shall contribute 90% of the applicable monthly cost for family or single coverage for any enrolling employee who contributes the payroll deduction, 10% of such monthly applicable costs.”**

With respect to the proposed change of Article XXI, Section 4, the City’s position along with the OPBA position is in the recommendation of the fact-finder set forth below.

City of Englewood’s Position

The City seeks to modify the current language of Article XXI , Section 4 of the agreement. The current language reads as follows: “Change of Providers – The Provider, if any, for coverage(s) provided in this Article shall be at the choice of the City provided

that coverage changes shall not be altered except through negotiations with the Union. If a change occurs in the Provider, the Union shall be notified of any change in the delivery of coverage hereunder at least 30 days prior to the effective date of any such change.”

The City’s proposal for changing such language is as follows: “Change of Providers – The Provider, if any, for the coverage(s) provided in this Article shall be at the choice of the City. If a change occurs in the Provider, the Union shall be notified of any change of the delivery of coverage hereunder at least 30 days prior to the effective date of any such change.”

It is the City’s position that the change in the language of Article XXI, Section 4 is necessary to meet the realities in today’s workplace. Annually, in November, the City attempts to secure bids from insurance providers and select a provider and have City Council pass on said provider. Given the time constraints and the inefficiency of the process, due to no fault of the City, negotiations for change of benefits or plan design are simply problematic. The City has had one recent experience in 2006 with a negotiation obligation which proved that the current language of Article XXI, Section 4 is unworkable. Therefore, the City seeks this proposed change to Article XXI, Section 4.

OPBA’s Position

The OPBA’s position is that the language of Article XXI, Section 4 should remain the same. To grant the City’s proposed change would be to eliminate the bargaining unit’s voice with respect to benefit levels and coverage. It also would subject the employees to the whim of the City with respect to the coverage and benefit levels. If the City were given full total control over coverage and benefit levels, such matters as out-of-pocket payments by employees and co-pays could skyrocket without the employees’

ability to voice opposition to the degradation of a negotiated benefit.

RECOMMENDATION

Pursuant to the existing language of Article XXI, Section 4 of the contract, the City has the right to change healthcare providers at its discretion. Presumably, the City could reap the cost savings associated with such changes, and, thereby, manage the healthcare costs more effectively.

However, as reflected in Arbitrator Paolucci's recent arbitration decision dealing with health insurance coverage, the Employer is not free to alter coverage without negotiating with the OPBA over the proposed changes. In its proposal, the City is seeking to gain total discretion over the choice of providers as well as the level of coverage.

It must be recognized that during the course of the collective bargaining process, the parties established the relative value of economic provisions and benefits. The value of the benefits is established when the parties reach agreement and ratify the contract. Generally, the parties negotiate contracts with three (3) year terms. The value of medical benefits is expected to remain in tact during the term of the agreement. To permit one party to alter the medical benefit level at its sole discretion, would be to open the door to the diminution of the jointly established value of the medical benefits. The adversely impacted party would lose the benefit of their bargain.

Notwithstanding the annual bidding process conducted by the insurance industry and the time constraints faced by the City in securing insurance benefits for its employees, maintaining the employee's ability to influence the decision that affects the value of the medical benefits bargained for warrants maintaining the status quo with respect to Article XXI, Section 4. Therefore, it is recommended that the language of

Article XXI, Section 4 appear in the new contract as it appeared in the predecessor contract.

Issue 3 – Holidays

OPBA's Position

The current collective bargaining agreement calls for the police officers of the bargaining unit to be compensated at time and a half on three of ten holidays. Those holidays are the 4th of July, Thanksgiving Day, and Christmas Day. The OPBA seeks to require the City to pay time and a half for all ten holidays worked.

The Union points out that comparables justify an increase in payment. Moreover, the cost of increasing the payments by half time for all holidays is relatively small.

City of Englewood's Position

It is the City's position that increasing the compensation for officer's working on the other seven holidays is not warranted. According to the City, the officers knew the holiday compensation benefit before becoming employed in Englewood. Moreover, no compelling reason exists to alter the compensation for holiday pay. It simply is not enough to point to comparable jurisdictions and propose to get what they have in the way of holiday compensation.

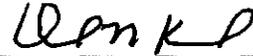
RECOMMENDATION

Although the comparables would suggest that Englewood police officers are behind the other jurisdictions in Montgomery County with respect to compensation for holiday worked, no other compelling reason appears on the record to justify the change sought by the OPBA. Absent a compelling reason to make the change under these circumstances and given what has been recommended with regard to wages and health

insurance, it is the undersigned's recommendation that the status quo remain with respect to holiday pay compensation.

IV. Certification

The Fact-Finding Report and Recommendations are based on the evidence and testimony presented to me at a fact-finding hearing conducted on February 26, 2007. The recommendations contained herein are developed in conforming to the criteria for fact-finding found in ORC 4717 (7) (a-f) and the associated administrative rules developed by SERB.



Daniel N. Kosanovich, Esq.
Fact-Finder

V. Proof of Service

This Fact-Finding Report was mailed to Joseph M. Hegedus, 92 North Woods Blvd, Suite D-2, Columbus, Ohio, 43235 and Dwight A. Washington, Cooper, Gentile & Washington Co., LPA, 118 West First Street, Talbot Tower, Suite 850, Dayton, Ohio, 45402 on March 23, 2007. This report was also emailed to the parties on March 23, 2007.



Daniel N. Kosanovich, Esq.
Fact-Finder