

IN THE MATTER

STATE EMPLOYMENT
RELATIONS BOARD

OF

2007 APR -3 A 11: 52

FACTFINDING

BETWEEN

CITY OF ST. MARYS, OHIO

AND

OHIO PATROLMENS BENEVOLENT ASSOCIATION

Date of Hearing: February 6, 2007
Location: City of St. Marys, Ohio
Case No.: 06-MED-10-1178
Date of Award: April 2, 2007
Finding: Each recommendation is specifically addressed below.

Union Representative:

Matthew Baker
OPBA
555 Metro Place North, Suite 100
Dublin, Ohio 43017
614.791.3244; Fax

City Representative:

Patrick Hire
Regional Manager
417 North West Street
Lima, Ohio 45801-4237
419.229.8617; Fax

REPORT AND RECOMMENDATIONS

Michael Paolucci
Factfinder

Administration

By letter from Dale A. Zimmer, the Administrator with the Bureau of Mediation at the State Employment Relations Board (SERB), the undersigned was informed of his designation to serve as Factfinder in a procedure as mandated by R.C. 4117.01, et al., more specifically R.C. 4117.14(C)(3). On February 6, 2007, after mediation was attempted but was unsuccessful, a hearing went forward in which the Parties presented testimony and documentary evidence in support of positions taken. The record was closed upon the submission of final arguments and the matter is now ready for factfinding recommendations.

Resolved Issues

Prior to the hearing, the Parties were able to reach agreement on numerous issues. These agreed to issues are incorporated herein as being recommended, and made a part hereof by reference. They are not more specifically addressed.

Unresolved Issues presented

The following three (3) issues were presented for conciliation:

1. Article 20 – Health Insurance;
2. Article 43 - Wages;
3. Article 42 – Duration;

* * *

Under R.C. 4117.14(E) & (G)(7), a Factfinder is required to give consideration to certain factors in choosing between the Parties' proposals, on an issue-by-issue basis. That statute reads as follows:

(e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section.

* * *

(G)(7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

* * *

The remaining unresolved issues are addressed giving consideration to all of the necessary statutory elements.

Factual Background

The Employer is the City of St. Marys, Ohio; its nine (9) Police Officers are represented by the Union. The City is a mostly rural area with a small urban center. The Parties have had a collective bargaining relationship since 1995 and were able to resolve most issues in advance of factfinding. The three (3) issues that remain unresolved were due to the rise in health insurance and the unique method the Parties have negotiated for addressing changes to health insurance. The Union used comparables of Lima, Celina, Bellefontaine, Kenton, Greenville, Sidney, and Wapakoneta. The City used comparables of many municipalities in SERB's region 5 to show that although not comparable in many ways, the City was still being competitive with larger, more urban areas.

The Parties were successful in reaching a tentative agreement on the issues. However, before finalizing the Agreement, the City believed it would be prudent for the Union to understand exactly how much the new Health Care package was going to cost. Therefore, prior to having a vote on the tentative agreement, a meeting was held to discuss the new health care plan. Following that meeting the bargaining unit realized that the costs for the new health care package would result in a very large increase of the premium that was to be paid by the members. As a result of the increased health care premiums that the bargaining unit employees would have to be responsible for, the tentative agreement was rejected by the Union. Thus, although a tentative agreement was reached on all issues, because of increased costs for the Health Insurance premium it was rejected by the Union.

Contentions of the Parties
And Recommendations of the Factfinder

The following issues were presented at the hearing:

1. **Article 20 – Health Insurance.**

The Union proposes several changes as follows:

- the current five (5) day review period would be changed to fourteen (14) days;
- the premiums paid by the City would rise in each year of the three (3) year agreement, by \$800.00 in 2007; by \$500.00 in 2008; and by \$500.00 in 2009; and the change would apply to both the Family and the Single Plans.
- The employees would have a maximum amount (cap) for their share of the premium based on a weekly and yearly calculation (when it exceeds the amounts listed above that is paid solely by the City);

The City proposes adding language that would abolish the Health Insurance Committee as a review and voting body, as set forth in Section 20.2, and proposes making other changes that would recognize that the Health Insurance Committee, as currently configured, would be abolished.

The tentative agreement was that the Family Premium Cap would be increased by \$100.00 in 2007, \$100.00 in 2008, and \$100.00 in 2009. No other changes to the Health Insurance Committee were made.

In order to better understand the Parties' position, the pertinent section of the Agreement is recited:

Section 20.2. The types and levels of benefits to be provided under this article shall be as agreed to by the City of St. Marys and the various employee groups covered under the plan. The plan will be jointly reviewed by the City and one (1) representative from each of these groups on an annual basis and any reduction in coverages provided under the plan will be determined by a majority vote of plan participants voting. The OPBA health insurance representative will be permitted five (5) calendar days to review the plan prior to a vote being taken. In addition to the

OPBA, the other groups involved are: the Local 552 of the UWUA, the OPBA (Dispatchers), the International Association of Firefighters Local 3633, and that group of non-bargaining employees also covered under the plan. Any increase in coverage provided under the plan shall be subject to negotiations between the City and the above listed groups.

The City maintains a partially self-insured health insurance program. It keeps this program with the level of benefits being set by the Committee described in 20.2. The City has administered the plan in a manner intended to keep premiums as low as practicable. It showed that it has been very transparent with the financial condition of the plan and the employees are told everything pertinent to the plan's financial health. It pointed out that through the use of the City's contribution through a cap and because of reserve funds accumulated from good experience years, it was able to reduce the premium for 1997-1999. It contends that the Union's proposal would get rid of this system that has served the Parties well, and has proven fair to both.

The City showed that the cap was set at \$3,675.00 in 1986 when it was first set up and that such was the full amount of the cost of the plan. In exchange for covering 50% of all increase above the cap (which was increased from time to time) the City agreed to place the level of benefits under the jurisdiction of the Health Care Committee. The City showed that the Health Care Fund balance has decreased over the last few years from \$182,694 in 2004 to -\$62,030 in 2006. The City had to make up the difference for the negative balance.

Union Position

The Union argues that the employees can not afford the large health care premium increase and it proposes that the caps be increased to prevent employees from being unfairly harmed. It argues that the Union has cooperated fully with the City, that it has made several offers to modify the

plan to reduce costs, and that it should not have to shoulder the entire burden for the increased health care premium.

The Union presented comparables that show that the health care plan it currently has is not that different from the local jurisdictions. It rejects the notion that it is solely responsible for the unchanged benefits levels since there are others on the committee that could change the levels if wanted. It contends that the City's proposal would result in this bargaining unit suffering a net loss even if a wage increase were given, and it proposes that steps be taken to prevent that result.

City Position

The City points out that the change in the time for review was only added by the Union at factfinding. Since the issue has not previously been discussed, it asks that it not be recommended. It argues that it is confused because there has never been a complaint about this issue.

The City also argues that the Union's position on caps are significantly higher than anything proposed during factfinding. It criticizes the remaining portion of the Union's position on Health Care since it shifts the entire burden onto the City for caps, while it retains control of the health insurance plan design. It argues that the Union has continually voted against any changes in the health insurance plan, including attempts to contain costs, and it wants the City to fund the health insurance at a level the Union finds acceptable. It argues that the new "two-cap" system proposed by the Union is excessive; is completely new to the process; and the weekly cap renders the yearly cap meaningless. It argues that granting the Union proposal would allow it to control the health benefit levels, while passing the risk on to all other City employees.

The City contends that the Union is suffering from "buyer's remorse." Since the Health

Insurance Committee has been in effect since the bargaining unit came into existence; and since the right to determine the level of benefits was given in exchange for sharing the costs; then it argues that the Union is acting as if it regrets having the power to determine the level of benefits. It argues that the intent of the process was to invest the employees in the plan and thereby make it in their best interest to modify the plan as necessary to keep the costs at an acceptable level. It points out that the current plan is essentially the same as that offered in 1989 with the health insurance fund showing a continual decline in available revenues. It argues that the administration of the benefit level is not being changed because of the committee and it should not have to be responsible for the inability of the committee to act in its own best interest.

The City complains that the Union got the benefit of controlling the level of benefits, but now also wants the City to be completely responsible for all future cost increases. It argues that if the employees want to control the level of benefits, then they must share the resulting increase in costs. It contends that while it is interested in making changes to the plan, it can not do so unless the Health Care Committee's control of the benefits level is removed. Until the City can control benefits levels, it argues that it should not be responsible for all increases. It contends that the Union has for many years rejected proposals that would have controlled costs. Since they would not approve changes to benefits level that are common throughout Ohio, then it asserts that the Union is responsible. It underscores the fact that the Union controls two (2) of the bargaining units on the Committee and could easily, along with the City vote, address the problem. Since they have not acted, then it argues that the City should not be the ones to suffer.

The City also points out that the Union's proposal would result in its receiving a higher increase in the cap than other employees in the City. It argues that the only way to correct the

problem would be to abolish the Committee, as it has proposed. Its proposal, it asserts, would allow mid-term bargaining once all the other bargaining units have agreed and is thus reasonable. It contends that this issue is very important and asks that due consideration be given to its position.

Recommendations

It must be recommended that the tentative agreement be adopted.

The consistent reduction in the fund balance from \$182,694 in 2004 to -\$62,030 in 2006 alone proves that a problem exists. Moreover, the intransigence of the Committee to changes in plan benefits shows that it does not work in the face of industry wide changes. Whereas all comparables, state-wide, are changing their benefits levels to reduce premium costs, this Health Care Committee has held steadfastly to what have become, through the passage of time, unrealistic benefits. The City should not be restricted in its need to reduce costs by something that is outside of its control. The intent was to have a balanced effort in controlling costs. The Committee, instead of responding, has ignored reality thus creating an imbalance. It would be better to restore that balance, but it must be recognized that it is beyond the ability of the undersigned to do so here. Since the Parties negotiated the Committee into existence, it is better that they also negotiate it out or negotiate significant changes.

Thus, it is recommended that while the City's proposal has merit, it is inappropriate for the undersigned to recommend it. Because the tentative agreement allows the *status quo* to continue, but does not unduly punish the City for the Committee's inaction, then it is recommended. The tentative agreement is therefore recommended.

2.

Article 42 – Duration

Although the City made a proposal that the duration not include full retroactivity, the issue was presented last and was rejected by the undersigned at the hearing. The undersigned represented to the Parties that the change in facts between the tentative agreement and the vote by the bargaining unit was sufficient to justify a rejection of the non-retroactivity proposal of the City. Since the change in facts was the basis for the Union’s rejection of the tentative agreements; since that change in facts was a legitimate reason to reconsider their position; and since retroactivity should only be denied when serious justification exists, then it is the decision of the undersigned that there is no reason to not make the Agreement retroactive. Such was stated at the factfinding hearing, and it is reiterated here as the formal recommendation. It is therefore recommended that all wage changes be made retroactive to the expiration of the previous Agreement.

Recommendations

Based on the discussion above, it is recommended that the Agreement be made retroactive.

3.

ARTICLE 43 – Wages

The Union proposes a 4.5% increase in each year of a three (3) year agreement. It also proposes a shift differential of .40 cents per hour for employees working between 4:00 p.m. and 8:00 a.m.

The City proposes a 1%, 1.5%, and 1.5% wage increase in each year of a three (3) year

agreement. The City also proposes a change that would pay any new officer who has not received their Ohio Peace Officer Certification only 90% of the Step 1 rate. Upon receipt of the Certification their wage rate would be raised to a regular officer pay rate.

The tentative agreement was a 3%, 3.5%, and 3% wage rate effective on January 1st of each year of a three (3) year Agreement.

City Position

The City complains that the Union's position is 1.5% higher than any proposal made during negotiations and that it places too much of a financial burden on the City. It rejects comparing this jurisdiction with any of the large cities in Ohio. It asserts that its offer is extremely competitive with those comparable jurisdictions that it has historically competed with for employees. It argues that its proposal will keep the City competitive with the employees of competing jurisdictions and is overall a fair compensation package.

The City asserts that the new benefit proposed by the Union was withdrawn as part of the tentative agreement; that it was previously described by the Union as a non-issue; and that the proposal itself is not appropriate for this bargaining unit since shifts are scheduled on a rotating basis. Since there is no regular inconvenience, and since the City uses the rotating shifts to minimize personal inconvenience, then it claims that there is no justification for the benefit. As a comparable, it points out that the dispatchers do receive a shift differential since their shifts are permanently assigned.

The City contends that its proposal is justified since new officers are not fully functioning until they complete their schooling. Because of this lack of full functioning, it contends that the 90%

pay rate is justified; and acts as an incentive for new employees to complete the certification as soon as possible.

Union Position

The Union showed that the effective wage increase, based on a 3% wage increase and the new health insurance premium, is between -1.2% and -1.6% for each member of the bargaining unit. It describes this net loss in wages as serious and sufficient to justify its position being different from the tentative agreement. Since, even with a 3% wage increase the bargaining unit members are losing wages, then it claims that its position is justified due to the anticipated health care premium increase. Without the wage increase requested, it argues that the members will suffer a wage reduction.

The Union points to both the external comparables and the City's relatively good financial condition for justification of its request. It contends that the bargaining unit is falling behind other local police agencies that it has traditionally kept up with. It also cites much of the City's financial condition as proof that it can afford the wage increase. It argues that fairness justifies its request.

Recommendations

For the reasons given under the health care issue, the tentative agreement is recommended. The increases are substantial and are fair. The wage rates compare favorably to local comparable jurisdictions. Moreover, the argument that these bargaining unit employees will fall behind because of the increase health care premium must, frankly, be found as partially their own fault. The bargaining unit is asking for too much – it is unreasonable to both control the benefits level and then

complain about the costs that follows. Unless and until this bargaining unit agrees to change the benefits level its complaint that the health insurance premium will effectively lower its wages will not be logical or reasonable. Because the control of the benefits level is outside of the City's control, it must not be required to pay a higher than otherwise justified wage increase to cover the gap caused by the premium increase. The tentative agreement is fair in its wage increase; it is comparable to local jurisdictions; it is consistent with past treatment of the bargaining unit; it takes into account the City's financial condition; and it does not punish the City for the increase health insurance premium costs.

For all these reasons, the tentative agreement must be recommended.

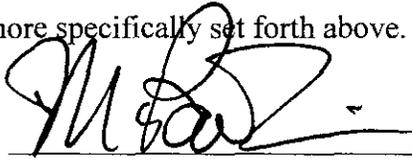
Remaining Unaddressed Issues

All other issues not specifically addressed are ordered to be the Tentative Agreement.

Recommendations

The recommendations are hereby as more specifically set forth above.

April 2, 2007
Cincinnati, Ohio



Michael Paolucci