

**FACT-FINDING REPORT
NOVEMBER 8, 2007**

STATE EMPLOYMENT
RELATIONS BOARD

2007 LEC -6 A 11: 29

CITY OF WARREN, OHIO)
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Employer)
)
-and-)
)
)
OHIO PATROLMAN'S BENEVOLENT)
ASSOCIATION)
)
Union)

CASE NO. 06-MED-10-1267

APPEARANCES FOR THE EMPLOYER:

GARY C. CICERO Employer Representative and Human Resource
Supervisor
BRIAN M. MASSUCCI Personnel Supervisor

APPEARANCES FOR THE UNION:

S. RANDALL WELTMAN Union Representative
FRANK DASCOULIAS Union Director
GREG HOSO Negotiating Committee
MANNY NITES Union Director

FACT FINDER:

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November 8, 2007

Via Certified Mail & Facsimile

Gary C. Cicero, Director
Human Resources
City of Warren
391 Mahoning Avenue, N.W.
Warren, Ohio 44483

S Randall Weltman
Ohio Patrolman's Benevolent Association
10147 Royalton Road, Suite J
P.O. Box 338003
North Royalton, Ohio 44133

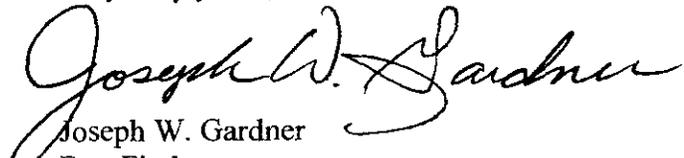
Re: Ohio Patrolmen's Benevolent Assoc. and
City of Warren
Case No.: 2006-MED-10-1267

Gentlemen:

Please find enclosed the Fact-Finding Report concerning the above-referenced case together with my invoice.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Joseph W. Gardner
Fact Finder

JWG:pv
Enclosures

2007 DEC -6 A 11:29
OHIO EMPLOYMENT
RELATIONS BOARD

INTRODUCTION

The Parties met on the 3rd day of October, 2007 at a neutral site in the City of Warren, Ohio by agreement of the parties for the Fact Finding Conference. The parties engaged in mediation on all of the issues.

Although the mediation was enlightening for both parties and this fact finder, the parties were unable to settle any issues. The fact-finding conference was opened.

At the Fact Finding Conference, each party was given the opportunity to present arguments and evidence through testimony and exhibits. All exhibits were admitted into evidence. The Union called two witnesses during the Fact Finding Conference. Each of the ten issues was taken one at a time. Evidence was introduced and arguments were made on each and every issue. At the end of the hearing, the parties agreed to extend the time period to mail the fact-finding report. The parties directed this fact finder that the mailing date of the Fact Finding report would be November 8, 2007. The Fact Finding Conference was ended and the record was closed.

The representative of both parties signed a document stating: "Mailing date of Report -- November 8, 2007." Before the Fact Finding Hearing, both parties timely submitted position statements setting forth the following issues for Fact Finding.:

1. Article 11-Seniority, New Section: Special Capacity.
2. Article 11-Seniority, New Section: Zone Preference
3. Article 15-Hours of Work: Section 2
4. Article 16-Pay Provisions: Section 1: Wages
5. Article 16-Pay Provisions: Section 2: Overtime

6. Article 16-Pay Provisions: Section 4: Court Appearance Time
7. Article 16-Pay Provisions. Section 7: Vacancies
8. Article 16-Pay Provisions, Section 8: Hazardous Duty Pay
9. Article 17-Miscellaneous, Allowances, Section 2: Uniform Maintenance Allowance
10. Article 33-Chemical and Mechanical Testing.

During the Fact Finding Conference, all factors as set forth in Ohio Revised Code §4117.14 have been reviewed and considered as follows:

- (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 stipulation of the parties;
- (f) Such 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.

BACKGROUND AND HISTORY

The City of Warren is the County Seat for Trumbull County, Ohio and is the largest city in Trumbull County, Ohio. The Union represents 58 police officers in the City of Warren, which consists of all non-ranking police officers. They are commonly referred to as "Blue". During the Fact Finding Conference, the Union introduced an exhibit from the Warren Tribune of June 12, 2007. The headline was "Study, No Job Cuts Expected." The gist of the article was that job seekers have a better chance of finding work in the Mahoning Valley than any other place in the State. The study goes on to say that the local outlook is stronger than the National Picture, however, the reports show that there were three straight quarters of declining employer confidence. The study seemed to say that more people planned to add additional workers than to cut the existing work force. This appeared to be an optimistic view of the economic outlook from "Manpower Employment Outlook Survey", a self claimed world leader in the employment services industry.

The City representatives paint a different picture for the citizens of the City of Warren and the taxpayers. They state that it is global news that Delphi Electric is avoiding bankruptcy by drastically downsizing operations and lowering wages for their remaining employees. This has meant a reduction in the Warren area of 3,900 employees and considerable tax revenue. The City claims that this scenario is also true for General Motors, one of the biggest employers in the City of Warren. The City states that General Motors has been reduced to 1,600 employees. It also states that Warren's other big employers, such as Forum Health, is attempting to avoid bankruptcy by downsizing operations. The loss of jobs has caused many taxpayers who were earning top pay to take cuts in income. Many have lost income altogether and are now on state or government programs.

Since Warren has an income tax and since much of its funding comes from an income tax, any decrease in employment will be an automatic decrease tax dollars collected. This will leave less money in the future for payment of services. The City states that it must be careful in pay raises and increases in financial benefits that could eventually result in the reduction of the City's work force, via attrition and lay offs.

The City states that with the loss of population and with the loss of jobs, Warren's tax base is eroding.

The Union states that the Union would rather have layoffs, which would be a reduction in the workforce, than accept a pay decrease or decrease in benefits.

The Union states that the non-ranking employees, the Blue Unit and the supervisors, the Gold Unit, have bargained separately since 1996. Both the supervisors and the patrol officers have a common expiration of terms of their respective bargaining agreements.

The Union states that "all but one of the OPBA's negotiations with Warren has gone the distance having to be resolved to a conciliator." The point that is being made by the Union is that the City does not agree with the demands of the Union and that a fact finder and a conciliator is needed the vast majority of times to resolve labor contract issues. The Union states that it simply wants parity with the Gold Unit and that despite the comparability of both units, the Union accuses the City of refusing to offer this bargaining unit overall parity with the Gold Unit.

Both parties have introduced comparables, which will be referred to later in the report. The Union accuses the City of unwillingness to meet the demands of the Union. The Union also states when the issues are presented to fact finding and finally to a conciliator, which is "binding arbitration", the City usually loses and the conciliator or fact finder sides with the Union.

During the fact finding conference, both representatives made compelling presentations for the respective parties.

Issue I. Article 11-Seniority.

After a complete discussion of this issue, the parties suggested that the language set forth in Employer Exhibit No. 1 should be made part of the contract. The undersigned reviewed all of the evidence and arguments and believes that the stipulation of the parties is appropriate.

RECOMMENDATION

The undersigned recommends that the contract language should be as follows:

Posting and Bidding.

A. The City shall post and vacant or new non-emergency, non-ESD assignment, which is intended to be filled by a bargaining unit member for a period of three (3) days after such assignment, is known to occur. All police officers may bid for the assignment through the police chief or his designated representative.

B. All bids within the three (3) day period shall be reviewed by the police chief and the interviews of those bidders shall occur. The assignment will be filled at police chief's sole discretion.

Issue II. Article 11-Seniority-New Section Zone Preference.

The parties have stipulated to the language set forth in Employer Ex. 3. The undersigned has reviewed the arguments and evidence and believes that the language presented and stipulated to by both parties is appropriate.

RECOMMENDATION

The undersigned recommends that the contract language as set forth in Employer Exhibit 3, should be made part of the contract.

Article 11-Seniority. Section 4: Zone Preference:

ESD shift zone assignment shall be made by seniority given preference to the senior police officer. Compelling circumstances may justify denial of an officer's preference. The parties shall interpret "compelling" in a strict sense.

Issue III. Article 15-Hours of Work-Section 2.

The Union seeks to modify the times for normal shifts in conformance to its proposal relating to 10-hour shifts. The Union explains that it desires to get what the sergeants have already received. This fact finder notes that Fact Finder Gregory J. Lavelle has recommended four (4) ten (10) hour days in Case No. 06MED-10-1163. Conciliator, Ellen Miles Ruben confirmed the decision in the fact finding in this same case stating that ten (10) hour workdays are appropriate for the Emergency Service Division sergeants. The police chief of the City of Warren in Union Ex. 1 has stated that: "The experimental ten (10) hour shift has been a great success. We have been thinking of allowing the remainder of the police department to migrate from eight (8) hour shifts to ten (10) hour shifts."

The City, on the other hand, states that everything would be fine if everything stayed the same. However, the City maintains that if layoffs occur, problems in scheduling will occur. The City maintains that if the tax issue now up for a vote does not pass, the police supervisors will "have their hands tied" when attempting to provide full time services.

From all evidence, the ten (10) hour work day shifts are working well not only for the Union members, but also for the City. With the recommendation of a fact finder, the decision of a conciliator, and the support of the chief of police, this fact finder believes that the ten (10) hour workday schedule is the best option.

RECOMMENDATION

The undersigned recommends that the following language be placed into the contract:

The police chief has the sole authority to determine the schedule necessary within the police department, except that the normal shifts shall be consistent with a ten (10) hour workday schedule.

Issue IV. Article 16-Pay Provisions-Wages.

The Union states that the ranking employees, the Gold Unit, have “financial benefits” that the Blue Unit does not have.

The Union has introduced comparables and the Union states that the City of Warren is 15% below the average for comparable wages. The Union further states that the bargaining unit members are 10% below average for the total amount taken home. It further states that the disparity of income has fallen from 13% below the average to 16% below the average. In its position statement, the OPBA seeks an increase in 2007 by 3%, in 2008 by 3%, and in 2009 by 2%. In addition, in order to reach comparability with other similar bargaining units, the Union has proposed that the Union be paid for other matters such as:

1. Proficiency Pay;
2. Senior Patrolmen Status;
3. Hazardous Duty Pay.

The above activities and duties are already being performed by the members of the bargaining unit. Paying for these items is making a pay increase without calling it a pay increase. The Union argues that payment for the above duties or activities will get the Union to “average” pay without calling it a pay increase. The Union seeks a pay increase plus the above benefits to reach at least 4% each year of the contract.

Union Exhibit 2 is a comparable, showing “top pay” and other benefits of Ohio cities with similar populations. The pay of Warren Police Officers is significantly below the average. Union Exhibit 3 shows the wage/settlement breakdown throughout Ohio as a 3.23% increase. Union Exhibit 4 shows Warren Police Officers earning less than their Youngstown counterparts.

The City and the Union presented their respective proposals in their position statements. The cost for the City’s proposal is \$251,145.31 as a “yearly increase total” with the “3 year life of contract insurance” of \$501,852.09. The cost for the Union’s proposal is \$686,506.51 for the “yearly increase total” and \$1,394,639.66 as the “3 year life of contract increase.”

The City also states that the reason why there is an increase in the pay amounts for the Gold Unit versus that of the Blue Unit is that the Gold Unit gave up its first dollar health care. The City states that this bargaining unit still has “first dollar health care.” The Union disputes this point stating that other items in their contract was given up to keep “first dollar healthcare.”

The entire Mahoning Valley has experienced a loss in population and a loss in jobs. These losses have resulted in a reduction of the tax base. The cost of the Union’s proposal is significantly higher than the cost of the City’s proposal. The comparables show that the bargaining unit members are paid below the average of their counterparts in other like Ohio cities.

The Union’s proposal to pay the police officers for “benefits” that are really pay increases for the entire bargaining unit is somewhat unsettling. Fact finding, to be effective, must disclose to the taxpayers where their tax dollars being spent and why their tax dollars are being spent. Pay raises called something else should be avoided. This practice destroys trust.

Police officers risk their lives protecting us. They should be paid well. However, increases in pay that causes a reduction in the work force, either through attrition or layoffs,

endanger not only the public, but also endangers the remaining workforce. Pay increases that lead to attrition or layoffs must be avoided. The following recommendation should gradually bring the workforce to pay which is comparable to other like cities and permit the administration to implement policies to do so.

RECOMMENDATION

The undersigned recommends that the following language be placed into the contract:

There shall be an increase in wages of 3.3% in 2007, 3.7% in 2008 and 4% in 2009.

Issue V. Article 16- Pay Provision Section 2-Overtime.

The Union requests new language in the contract requiring the City to utilize no less than six emergency service department police officers on each shift. The OPBA proposes to add language requiring that shifts consisting of less than six emergency service department police officers shall be supplemented by calling out patrol officers only.

The problem now being faced is that when supervisors are called out, they only “supervise”. The Union claims that the supervisors do not perform the duties of a patrol officer. If a shift is below of what is deemed necessary to provide proper police protection, and the absent police officer is a patrolman, many times a supervisor is sent out. Even though the unit may already have a supervisor on duty, the called out officer does not perform the duties of a patrol officer, but only provides supervisory duties. Not only does the City still have a “shortage” in proper personnel for police protection, the taxpayers are paying for supervisory work that is already being done.

The Union has claimed this situation exists and there is no evidence to the contrary.

The Union states that its proposal is a “win/win” for the City. Presumably, the Union means that the City would be permitted to call out one of this bargaining unit’s members instead

of a member of the Gold bargaining unit, in spite of any seniority requirements in any contract. Only then would it be a “win/win” situation. Neither party has brought up any contractual obligations where the City is required to call out a supervisor with higher seniority in this situation. As long as the City is not required under another contract to call out a supervisor, with higher seniority to replace a member of the Blue Unit, this cause would be a “win/win” for both parties.

The City chose not to introduce any evidence on the issue stating that this is not a mandatory subject of bargaining. The City states it wants no restriction on the mandatory number of officers working at any particular time

RECOMMENDATION

It is recommended that the following language be inserted into the contract:

The department, to insure proper coverage and officer’s safety, shall employ and utilize no less than six (6) ESD police officers on each shift, provided however, that the City is not required to also call out police officers from other bargaining units pursuant to contractual obligations in other contracts with other bargaining units.

Issue VI. Article 16- Pay Provisions Section 4-Court Time

The Union proposes to increase current court appearance time from the current 2 hours to 3 hours. The Union has introduced an Exhibit No. 6 that shows a comparison for the payment of court time for similar Ohio cities. In most of the other cities, a minimum amount of court time is 3 to 4 hours. There are only 2 other cities in the comparison that had a minimum 2 hours court time. The Union argues that in order to go to court, the officer must get dressed to go to court, drive to court and must be prepared.

The City on the other had has introduced an Exhibit of one of the officer’s court time. The City points out with this that the number of hours for the vast number of times in court is

very short, usually less than 1 hour. Furthermore, the City states that in Exhibit 5, it would result in a 5% raise in pay for the bargaining unit member. The point that it was trying to make is that it would be a very expensive proposition for the City.

RECOMMENDATION

It is the recommendation of this fact finder that the language regarding court time remain the same.

Issue VII. Article 16. Pay Provisions-Vacancies

The parties have stipulated to the language set forth in Union Exhibit 7 to become part of the contract. This fact finder has reviewed this stipulation and finds it appropriate.

RECOMMENDATION

It is this fact finders recommendation that the following language shall be inserted into Article 16, Section 7 of the contract:

“Section 7: VACANCIES:

Temporary – A police officer who performs the duties of a sergeant or a lieutenant, or who replaces a sergeant or lieutenant, shall be paid the hourly rate of the rank filled for such periods as he/she performs the duties of the higher rank. Each hour the shift sergeant is acting lieutenant and/or no sergeant is present in ESD, the senior police officer shall be paid the difference between the sergeant’s rate of pay and the three (3) year police officer rate of pay.

Issue VIII - Article 16-Pay Provisions, Section 8: Hazardous Duty Pay

According to the position statement, the Union seeks to obtain the same hazardous duty pay as that paid to the City’s ranking officers. The Union claims that this is necessary to compensate the department’s real first responders and to obtain parity with the Gold Unit’s contract. The Union says that they lost this with getting pension pick up. The Union emphasized that the patrol officers are in danger and deserve to obtain this.

The City claims that the Union gave up this hazardous duty pay to obtain pension pick up.

This “benefit” of “hazardous duty pay” is a way to increase pay without stating that there is an increase in pay. Using this type of language erodes trust with the taxpayers.

RECOMMENDATION

The undersigned recommends that this proposal not be placed in the contract and that the contract language remain the same.

Issue IX. Article 17-Miscellaneous, Allowances,

Section 2: Uniform Maintenance Allowance

The Union claims that the combined uniform and maintenance of \$900 is insufficient. The Union states that the allowance amounts to less than what most departments provide. To remedy this situation and to address the effects of inflation, the Union proposes to add \$75 to the uniform allowance each year of the new agreement.

The City on the other hand said the allowance is the same as with the other FOP Union and the Firefighters. They further say that there is an internal comparable between other bargaining units and this bargaining unit.

RECOMMENDATION

This fact finder recommends that the contract in the language remain the same and that the demand of the Union not be accepted.

Issue X. Article 33-Chemical and Mechanical Testing

The City proposes that the language set forth in Exhibit B attached to their position statement be accepted. The City says that it is the same with the other contracts internally. The

City says that by doing this, they will be saving money in the future with lower insurance premiums.

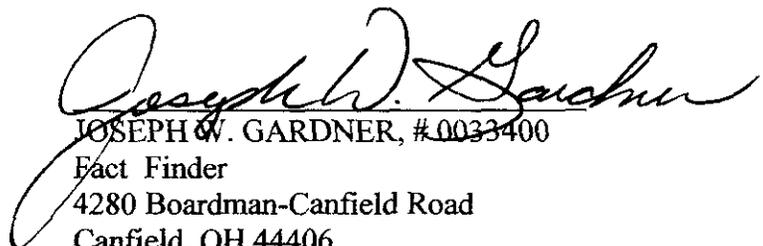
The Union states that they must give up privacy rights and other constitutional considerations but they get nothing in return even if the City does save money in premiums for the future.

Giving up the personal privacy rights and constitutional rights of the bargaining unit members is the giving up of liberty. Giving up these personal rights is a serious cost to the individual bargaining unit member. If this proposal is in the contract, a unit member may lose his/her employment simply by exercising a constitutional right. The financial impact of giving up those rights are not really felt until one must exercise those rights.

There are serious personal and financial consequences to the unit members if the Union gives up the privacy and constitutional rights of its members.

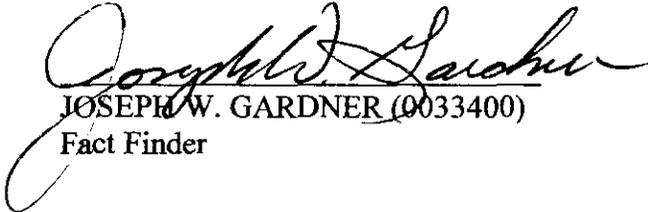
RECOMMENDATION

The undersigned recommends that the contract language remains the same.


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CERTIFICATION

A copy of the foregoing was sent via Certified U.S. Mail, return receipt requested and telefax on November 8, 2007 to Gary C. Cicero, City of Warren, 391 Mahoning Avenue, N.W., Warren, Ohio 44483, Fax: 330-841-2676, and to S. Randall Weltman, Ohio Patrolman's Benevolent Association, 10147 Royalton Road, Suite J, P.O. Box 338003 North Royalton, Ohio 44133, Fax: 440-237-6446.


JOSEPH W. GARDNER (0033400)
Fact Finder