

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

2007 SEP 14 P 12: 27

In the Matter of the Fact-Finding Between:

Ohio Patrolmen's Benevolent Association )  
and )  
City of Wadsworth )

Case No. 06-MED-10-1310  
1311

APPEARANCES:

*For the Union:*

Matthew Baker, Union Representative  
Heidi Sonntag, Dispatcher

*For the City of Wadsworth Police Department*

Benjamin Albrecht, Employer Representative  
James Kovacs, Human Resources Manager  
David Singleton, Chief of Police  
Chuck Potter, Director of Safety

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Before Sarah Rudolph Cole, Fact-finder

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## **Introduction**

The Ohio Patrolmen's Benevolent Association ("Union" or "OPBA") represents the bargaining unit at issue in this case. Seven dispatchers comprise the bargaining unit and are located within the City of Wadsworth Police Department ("City" or "Employer"). The parties' previous collective bargaining agreement (hereinafter "Agreement") expired on December 31, 2006. The parties participated in extensive negotiations as well as two mediations and, as a result, reached tentative agreements on many issues. A previous fact-finder was scheduled to conduct a fact-finding in February 2007, but withdrew at the Union's request. Although both sides filed unfair labor practice charges, the parties ultimately agreed to schedule a second fact-finding hearing. The fact-finding hearing took place on August 27, 2007 at the Wadsworth City Hall in Wadsworth, Ohio. The parties submitted the following issues issues, identified below, for fact-finding.

## **Criteria**

Fact-finders must consider the criteria articulated in Ohio Revised Code § 4117.14(C)(4)(e) and Ohio Administrative Code § 4117-9-05(K) when making a decision.

Criteria to be considered are:

- (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 interest 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 other facts, 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 proceedings in the public service or private employment.

### **Discussion**

The parties were at impasse on several issues: Hours of Work and Overtime, Article 16; Salary Schedule, Article 24; Uniform Allowance, Article 26 and Duration, Article 41. Each issue will be discussed separately.

#### **Article 16: Hours of Work and Overtime**

##### **Union Position**

The Union proposes that the City provide dispatchers with twenty-eight days' notice of a schedule change and that if the City fails to do so, it should, upon employee request, provide a written explanation for the shift change. In addition, the City would not be permitted to alter an employee's shift for disciplinary reasons. Finally, the Union proposes that, in the absence of at least seven days' notice, an employee's shift should not be moved exclusively to avoid overtime. The Union also proposes that a dispatcher should receive pay during meal breaks when the City requires that dispatcher to attend training outside of Wadsworth.

##### **Employer Position**

The City would like the current language to remain unchanged. The City emphasizes the need for flexibility in scheduling and the importance of conserving financial resources by

scheduling to avoid excessive overtime. The City also believes it is unnecessary to pay employees for meal breaks during trainings outside of Wadsworth.

### **Recommendation**

**The existing language related to workweek should remain unchanged but the City should pay employees for meal breaks when they are required to attend out of town training.**

The City presented convincing evidence of the need for flexibility in scheduling dispatchers. The pressing need for the police department to have a dispatcher available at all times requires that the City be able to call on other dispatchers to work, or to change a dispatcher's schedule when necessary. The unit is small in size; thus, if one dispatcher is sick or on leave (as has happened during the last year), it is not always possible to give the notice the Union desires before a schedule change is implemented. In fact, the Chief of Police testified, it is rare for the police department to last more than a week or two without making schedule changes, due to the demands of the position. In other words, due to illnesses, vacations etc., dispatchers' shifts need to be changed rather frequently. The Chief admitted that the City changes schedules in order to avoid paying overtime, but that he would not reschedule employees to avoid overtime on less than seven days' notice. Only if the vacancy lasts longer than a week, the Chief stated, would changes to scheduling occur. The Chief also testified that he has never changed a schedule for disciplinary reasons.

The Union did not provide evidence that the City manipulates dispatchers' schedules for disciplinary reasons. Although scheduling changes obviously work a hardship on dispatchers, it appears that the dispatchers understand the need for shift changes and are willing to volunteer to

work overtime the vast majority of the time. In the absence of evidence indicating bad faith reasons for changes to the schedule and in light of the need for flexibility in scheduling this essential function, I recommend that the workweek language should remain the same.

The other section the Union proposes, payment for meal breaks during outside training, seems reasonable. The Union offered evidence that the patrol and sergeants are paid for meal breaks when they do outside training. The City countered that it is not obligated under the Fair Labor Standards Act to pay for meal breaks and that dispatchers rarely attend outside the city training. In light of the minimal expense to the City (because dispatchers rarely attend out of city training), and need for fairness among units, I find that the City should pay for meal breaks that occur during assigned training outside the City of Wadsworth.

#### **Article 24: Salary Schedule (Wages and Steps)**

##### **Wages**

OPBA proposes a 4% increase in each year of the three years of the new agreement. In other words, salaries for dispatchers would increase 4% in 2007, 4% in 2008, and 4% in 2009. The Employer countered with a proposal that salaries increase 2.75% for each of those three years, as well as substantial changes to the existing step system.

##### **Union Position**

The OPBA asserted that the dispatchers' compensation should be increased by 4% for each year of the new agreement. In support of its contention, the OPBA presented comparable information regarding wage increases for Norton, Brooklyn, Avon, Bedford, Bedford Heights, Berea, Lyndhurst, Mayfield Heights, Richmond Heights, Twinsburgh, University Heights and Warrensville Heights. The OPBA emphasized that in those cities, the average starting pay was

\$33,392 and top pay was \$42,777 while, in Wadsworth, starting pay is \$31,969 and top pay is \$36,192. The OPBA wishes to leave the current wage scale, with its three steps, unchanged (although, of course, it wishes to increase the numbers in the scales by the percentage wage increase implemented).

### **Employer Position**

The City proposes a wage increase of 2.75% to the wage scale in each of the three years of the new agreement. The City states that this raise is consistent with the raise the City negotiated with the IAFF, the firefighters' bargaining unit. In addition, the City proposes altering the wage scale so that there is more consistency among the steps. The City identifies the following comparable cities: Avon Lake, Beachwood, Berea, Brooklyn, Brunswick, Cuyahoga Falls, Fairlawn, Medina, Norton, Orrville and Rittman. The average minimum pay in those cities is \$30,960.87; the top pay is \$38,504.65. Considering only those counties within 20 miles of Wadsworth, the numbers drop to \$30,134.75 for minimum pay and \$37,728.80 for maximum pay.

### **Recommendation**

**The wage rate for the Wadsworth Dispatchers should increase 3% per year, for each year of the 2007-2009 Agreement. The step scale should be adjusted to take into account the increase, but should not be otherwise altered.**

Although the City negotiated a 2.75% increase with the firefighters, it also negotiated a 3.25% raise for the police and sergeants unit and a 3.25% increase in negotiations with the IBEW. The IBEW does not have a step system and the patrol/sergeants unit accepted changes to the step system. In terms of fairness among units, then, 3%, with no change to the existing step

system seems reasonable.

The comparable salary information the parties provided also suggests that a 3% raise is reasonable. The parties both selected Brooklyn and Norton as jurisdictions comparable to Wadsworth. Both of these comparables seem appropriate. Brooklyn is similar in size to Wadsworth, is within 20 miles of Wadsworth, and is in a county contiguous to Medina County. In 2006, the Brooklyn police received a 3.25% raise. The starting and top pay for Brooklyn, prior to this raise, was higher than the starting and top pay in Wadsworth.

The other mutual selection, Norton, is also similar in size. It is not as helpful as a comparable because Norton dispatchers have yet to negotiate a change to their existing collective bargaining agreement. At this point, prior to the fact-finding, the minimum pay in Norton was slightly below Wadsworth while the top pay was somewhat higher.

Although not selected by both parties, Bedford Heights and Richmond Heights are cities whose populations are similar to Wadsworth's. In both of those cities, starting pay was below Wadsworth, but top pay was above it. The parties' remaining comparable cities are less helpful – Orrville and Rittman are both much smaller than Wadsworth; most of the remaining comparables are much larger. Thus, the relevant comparisons seem to be Brooklyn, Norton, Bedford Heights and Richmond Heights.

The comparables suggest that Wadsworth police dispatchers are neither significantly over nor underpaid. The parties also submitted evidence that the average wage increase in the Akron/Canton area was 2.85% and that the average wage increase for police in Ohio was 3.23%.

Taking all this evidence together suggests that an appropriate raise for the dispatchers would be 3%. That number is close to the average of the wage increases other unions in

Wadsworth have already negotiated. In addition, it should keep Wadsworth dispatchers consistent with others in nearby cities and counties, because 3% appears to be the average wage increase for police employees within Ohio.

The fact-finder rejects the proposed changes to the current step system. One of the criteria the fact-finder must consider is: “past collectively bargained agreements, if any, between the parties.” The City claims that the steps are nonsensical because they raise salaries unevenly across the steps. One thing is clear from the review of the steps – the increases the dispatchers would receive as a result of the change would be less than what they received before and would be spread out over more time. Thus, a change to the steps would have a negative financial impact on the dispatchers. In light of my obligation to consider past collectively bargained agreements, the last two of which contained the existing steps, I am loathe to attempt to change the current process. Moreover, my review of the steps suggests that while the steps represent greater increases than the City’s proposed steps, the difference from step to step is not as irrational as the City suggests. Thus, I recommend that the step system currently in the agreement should remain in place, adjusted by the 3% increase in wages over each of the next three years.

### **Shift Differential**

#### **Union Position**

The Union proposes that the City add a shift differential to the base wage rate for employees who work between the hours of 2:00 p.m. and 6:00 a.m. The Union argues that other jurisdictions, like Bedford Heights, Brunswick and Medina, have shift differentials. The Union further contends that the shift differential was offered in part to offset the City’s proposed wage

scale and to offer additional compensation to those employees on later shifts.

**Employer Position**

The City states that no city employees currently have a shift differential and that the proposed differential would be very expensive. According to the City, adoption of the proposed differential would increase the salaries of those who work on second and third shift by 3% for the year.

**Recommendation**

**The Union proposal on shift differential should be rejected.**

As the Union concedes in its argument, the proposed shift differential was, at least in part, an attempt to compensate employees for ground lost on the step schedule. Because I recommend that the step schedule remain the same, that need for additional compensation dissipates.

Although some jurisdictions do offer shift differentials to later shifts, no unit in Wadsworth has a shift differential. Taking into account past collectively bargaining agreements together with other factors (including the cost of the proposal and that the step schedule remains the same), I find that it would be unwise to add a shift differential to the Agreement.

**Article 26: Uniform Allowance**

**Union Position**

The Union would like to maintain the current language, which provides employees \$700 per year for uniforms. While the Union recognizes that the City plans to change the dispatchers' uniforms at the end of 2007, it does not think that the uniform allowance should be reduced until that change actually occurs.

### **Employer Position**

The Employer contends that the \$700 uniform allowance in the current agreement was the result of a clerical mistake and proposes a uniform allowance for 2007 of \$635. The Employer contends that the uniform allowance that should have been in the previous agreement was \$535, so that the \$635 represents a \$100 increase in the uniform allowance. Moreover, the City would like to reduce the uniform allowance to \$450 for years 2 and 3 of the agreement because the employees will be wearing khakis and polos beginning in January 2008.

### **Recommendation**

**The uniform allowance for 2007 should be \$700. In 2008 and 2009, the uniform allowance should be \$525.**

Obviously, the parties disagree about the uniform allowance amount contained in their previous collective bargaining agreement. This fact-finder does not wish to make a statement about the meaning of the uniform allowance clause in the previous agreement because that issue is currently being grieved. The Company proposes \$635 for a uniform allowance for 2007. Brooklyn and Norton, the two jurisdictions that the parties agree are comparable for wages, provide employees with \$300 per year for uniforms plus \$350 per year for uniform maintenance and \$708.50, respectively. Bedford Heights and Richmond Heights, both cities with comparable populations, pay \$500 and \$800, respectively. In light of these comparables, and the closeness of the parties' positions, I recommend that the City pay \$700 in uniform allowance for 2007.

For 2008 and 2009, however, I believe that a more appropriate allowance would be \$525. The Union's suggestion that the allowance remain at the same level for the life of the new agreement would likely result in a windfall to employees. Since a uniform allowance is for

uniforms and is not a wage supplement, the more reasonable conclusion is to reduce the uniform allowance, beginning in 2008.

The only other city that uses khakis and polos (and who doesn't provide them to employees) is Cuyahoga Falls. Cuyahoga Falls gives employees a \$525 allowance for their clothing. The City proposes providing the initial clothing to the employees and then having them clean and maintain their clothing. The City offered evidence from Kohl's ads, suggesting that the proposed \$450 would be sufficient for a clothing allowance. While this evidence is helpful, the City lacks experience in the cost of purchasing and maintaining a non-uniform wardrobe. Because the comparable evidence is more convincing, I recommend that in each of the remaining years of the contract (2008 and 2009), the employees receive \$525 in uniform allowance and that the City provide the initial issuance of clothing.

**Article 41: Duration**

**Union Position**

The Union proposes that the new collective bargaining agreement be made retroactive to January 1, 2007 for wages only.

**Employer Position**

The City would like all contract items to become effective on the date of signing.

**Recommendation**

**The collective bargaining agreement should be made retroactive, for wages only, to January 1, 2007.**

The City contends that wages, which are traditionally retroactive to the day after the last agreement expires, should be effective on the date of signing because of delays in the negotiation

process. The City notes that it had initially agreed to make wages retroactive but that the agreement was nullified when the Union requested that the prior fact-finder recuse himself, a request to which the City objected. According to the City, the recusal resulted in a three month delay in resolving remaining contractual issues.

While this fact-finder sympathizes with the City regarding the delay it has endured, no evidence was offered to explain why the Union asked the fact-finder to recuse himself, nor was there any allegation that the Union requested the recusal for specious reasons. In the absence of evidence suggesting bad faith on the Union's part, the fact-finder recommends that wages be made retroactive to January 1, 2007.

This concludes the fact-finder's Report and Recommendations.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Sarah Cole", is written over a horizontal line.

Sarah Rudolph Cole, Fact Finder

Columbus, Ohio  
September 12, 2007

**Certificate of Service**

This is to certify that a copy of the foregoing was mailed this 12th day of September, 2007, by e-mail and DHL Overnight Express Mail to Benjamin Albrecht, Downes, Hurst & Fishel, 400 S. Fifth Street, Suite 200, Columbus, OH 43215 and Matthew B. Baker, Ohio Patrolmen's Benevolent Association, 92 Northwoods Blvd, Suite B2, Columbus, OH 43235. A copy was also sent by regular U.S. Mail to Administrator, Bureau of Mediation, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213.

  
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Sarah Rudolph Cole