

FACTFINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

December 12, 2007

In the Matter of:

City of Warrensville Heights)	
)	
and)	Case No. 07-MED-01-0037
)	Sergeants
Ohio Patrolmen's Benevolent Association)	

APPEARANCES

For the City:

Ken Stark, Attorney
Jim Smith, Attorney
Marcia L. Fudge, Mayor

For the Union:

S. Randall Weltman, Attorney
Michael G. Ledger, Negotiating Team
Fred Kerling, Negotiating Team

Factfinder:

Nels E. Nelson

BACKGROUND

The instant case involves the City of Warrensville Heights and the Ohio Patrolmen's Benevolent Association. The city is located in the southeast part of Cuyahoga County and has a population of approximately 15,000. The median household income in the city is \$45,492, which is about \$2,000 below the median for the county. The OPBA represents the sergeants and the patrolmen. The lieutenants are represented by the Fraternal Order of Police.

While the sergeants are the subject of this case, the status of the bargaining between the city and the patrolmen is a significant factor. The record indicates that when the contract between the city and the union expired on December 31, 2004, the parties went to factfinding. Factfinder Robert Lustig recommended a 3% salary increase for 2005 and 4% increases for 2006 and 2007. The city indicates that it was ready to accept the Factfinder's recommendations but the union rejected them.

Joseph Gardner was appointed as the Conciliator. A hearing was held on January 31, 2006. The union's final offer for salaries called for a freeze in 2005, an 8% increase in 2006, and a 4% increase in 2007 plus a 4% bonus of each employee's gross wages for 2005 to be paid after ratification of the contract. The city maintained that since conciliation had not been ordered prior to the end of 2004, the Conciliator could not award any salary increase for 2005 and proposed no increase in salaries in 2005 and 4% increases in 2006 and 2007.

When the Conciliator selected the union's final offer, the city filed an action in the Court of Common Pleas to vacate the Conciliator's award. It claimed that the Conciliator violated Chapter 4117 of the Ohio Revised Code by awarding a wage

increase for 2005 despite the fact that conciliation was not ordered by the State Employment Relations Board prior to the end of 2004. The city charged that the Conciliator breached Section 2711.10(D) of the ORC when he “exceeded [his] powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.”

On January 8, 2007, Common Pleas Judge Janet Burnside issued her decision. She rejected the city’s arguments and denied the city’s application to vacate the Conciliator’s award and upheld the union’s motion to confirm it.

The city appealed the decision of the Court of Common Pleas to the Court of Appeals. The parties filed briefs with the court and are waiting for the court to schedule oral arguments. The city indicated that it did not expect a decision until the spring of 2008.

The bargaining history for the sergeants is complicated by two factors. First, during 2006 they changed their representation from the FOP to the OPBA. During this process no bargaining took place. Second, the sergeants have not negotiated wage or salary scales but have negotiated a rank differential. Thus, the city’s attempt to vacate the Conciliator’s award for the patrolmen means the sergeants do not know what the patrolmen’s wages will be and, therefore, are reluctant to rely on a rank differential to determine their wages.

When the sergeants’ contract expired on August 17, 2006, and the union took no action to initiate negotiations for a successor agreement, the city took the initiative. On January 8, 2007, it filed a notice to negotiate with the State Employment Relations Board. The city claims, however, that the union refused to bargain over economic issues until the

dispute over the Conciliator's award for the patrolmen was resolved. As a result, the city filed an unfair practice charge against the union alleging that it had refused to bargain. At that point, the union declared impasse and requested factfinding.

The Factfinder was notified of his appointment on November 14, 2007. The hearing was held on December 3, 2007. At the request of the parties, the Factfinder agreed to issue his report no later than December 12, 2007. This allows sufficient time for a vote on his recommendations and, if his recommendations were rejected, enough time for SERB to appoint a Conciliator before the end of 2007.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit 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, and 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 issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties submitted six issues to the Factfinder. For each issue the Factfinder will state the positions of the parties, summarize the arguments and evidence they offered

in support of their positions, present a discussion of the issue, and provide his recommendation for the resolution of the each issue, including suggested contract language.

1) Article XV - Premium Pay, Section 2 - The current contract provides for premium pay of \$480 per year for sergeants assigned to the SWAT team, the Accident Investigation Unit, the Motorcycle Unit, or as a K-9 Officer. The union proposes increasing it to \$780. The city offers to increase the premium to \$600.

Union Position – The union argues that its demand is justified. It states that the assignments are very specialized and require additional time, effort, and training. The union claims that the Accident Investigation Unit is busy because the city includes parts of Interstates 271 and 480. It asserts that the city’s SWAT team is busier than in other cities.

City Position – The city argues that its position ought to be recommended. It points out that the lieutenants have already accepted its proposed increase in premium pay and that “the interests of parity mandate consistency among bargaining units.” (City Pre-Hearing Statement, page 17)

Analysis - The Factfinder recommends that premium pay be increased from \$480 to \$600. This represents a 25% increase in the amount of the premium and has already been accepted by the lieutenants. The union provided no evidence to support a larger increase.

Recommendation - The Factfinder recommends the following contract language:

Those officers officially assigned to the SWAT Team, the Accident Investigation Unit, the Motorcycle Unit, or as K-9 officers, as designated by the Chief of Police, shall receive additional annual premium pay of \$600, payable in monthly increments of \$50, or such prorated bases thereof, as will evidence the time officially on duty in such capacity.

2) Article XVI - Holidays, Section 1 - The current contract provides for 11 named holidays where employees who do not work are paid eight hours at their regular straight-time rate and employees who work are paid time and one-half and given a day off in lieu of the holiday. The union wishes to increase the number of holidays by adding Veterans' Day to the list of holidays. The city opposes the union's demand.

Union Position – The union argues that its demand is supported by data for other cities. It indicates that the average number of holidays and personal days is 12.40 in contiguous suburbs, 13.19 in the eastside suburbs, and 13.14 in the county.¹ The union adds that a Veterans' Day holiday would be appropriate since many of the officers are veterans.

City Position – The city argues that there is no justification for an increase in the number of holidays. It reports that the lieutenants and fire fighters get only 11 paid holidays and that even the mayor and her staff do not get paid vacation for Veterans' Day. The city contends that the principle of parity mandates that the sergeants continue to get 11 holidays. It stresses that the Conciliator in the patrolmen's dispute rejected the union's demand for an additional holiday.

¹ The contiguous cities are Beachwood, Bedford Heights, Maple Heights, Shaker Heights, and Solon. The eastside cities are Beachwood, Bedford, Bedford Heights, Euclid, Garfield Heights, Highland Heights, Lyndhurst, Maple Heights, Mayfield Heights, Mayfield Village, Pepper Pike, Richmond Heights, Shaker Heights, Solon, South Euclid, and University Heights. The county includes 35 cities but excludes East Cleveland.

Analysis - The Factfinder rejects the union's demand. While the external comparisons support its position, the lieutenants and fire fighters have the same number of holidays as the sergeants. The fact that the Conciliator rejected the patrolmen's demand for an additional holiday is entitled to some weight.

Recommendation - The Factfinder recommends the current contract language.

3) Article XXII - Compensation, Section 1 - The previous contract called for a rank differential of 12.50% until August 17, 2005, when it was increased to 12.75%. The union proposes increasing the rank differential to 13% and, in addition, seeks a guarantee apart from what happens to patrolmen's wages of a 4% bonus of gross wages paid in 2005; an 8% wage increase effective August 18, 2006; a 4% wage increase effective August 18, 2007; and a 3.5% increase effective August 18, 2008. The city wishes to eliminate the rank differential and offers wage increases of 4% effective January 1 of 2008 and 2009 and a wage freeze for 2010.

Union Position – The union argues that it is trying to obtain what was awarded to the patrolmen by the Conciliator on March 2, 2006. It points out that he awarded what amounts to 4% wage increases in 2005, 2006, and 2007 but because conciliation was not ordered by SERB prior to the end of 2004, which barred him from increasing wages in 2005, he awarded an 8% wage increase on January 1, 2006, and a bonus of 4% of gross wages paid in 2005. The union notes that the Conciliator's award was confirmed by Judge Janet Burnside in the Court of Common Pleas. It acknowledges,

however, that the city has taken the case to the Court of Appeals where it is awaiting oral arguments.

The union contends that its position is supported by wages in comparable communities. It reports that assuming 4% wage increases in 2005, 2006, and 2007, in 2005 the top patrolmen's salary in the city would be 97.51% of the average for the contiguous cities and total compensation would be 95.83% of the average; in 2006 salaries would be 98.23% of the average for eastside cities and 96.30% of total compensation; and in 2007 salaries would be 99.44% of the average and 98.22% of total compensation.

The union contends that an increase in the rank differential is appropriate. It reports that the agreement between the city and the lieutenants increases the differential between sergeants and lieutenants to 13%. The union observes that the differentials between patrolmen and sergeants and sergeants and lieutenants have always been the same.

The union challenges the city's claim that some of its comparable cities are not appropriate because they have significantly higher median household incomes than Warrensville Heights. It suggests that the city's ability to pay depends on the location of large employers. It notes that the list of employers in the city includes Meridia South Pointe Hospital.

The union maintains that the city has the ability to pay its salary demands. It points out that in 2006 the general fund had a year-end balance of \$1,274,686. The union claims that the deficit projected by the city is based on estimates made by the mayor and could be a planned deficit.

City Position – The city argues that the union’s proposal should be rejected.

It claims that it is an attempt to ride on the coattails of the patrolmen’s “improvidently decided conciliation.” The city complains that the union’s demand also represents an attempt to obtain retroactive pay because of its refusal to bargain.

The city contends that there is no reason for a rank differential. It states that sergeants are free to negotiate their own wages without relying on the patrolmen. The city asserts that if the Factfinder continues the link between sergeants’ and patrolmen’s pay, he will “be setting the stage for another Union refusal to bargain should the Patrol Officers’ contract again become mired in litigation.” (City Pre-Hearing Statement, page 11)

The city maintains that parity has been recognized as an important principle in settling disputes. It cites a number of decisions in support of this point, including the Factfinder’s decision in City of Cleveland and CARE (1992). The city notes that when the Factfinder was faced with a demand to break an established pattern, he stated:

[S]uch an increase would not be accepted as equitable ... If the Union’s demand were granted, the result would be chaos. Instead of a City-wide pattern, each union would argue that special circumstance justify a departure from the pattern. Each subsequent union would demand more than the one negotiating before it.

The city asserts that a pattern has been established in the instant case. It points out that the firefighters and the service employees agreed to wage increases of 4%, 4%, and 0% in their most recent contracts. The city worries that if the Factfinder recommends a larger increase for the sergeants, employees in these bargaining units will feel betrayed and labor relations will suffer.

The city charges that the union relies on inappropriate comparables. It points out that Beachwood, Highland Heights, Lyndhurst, Shaker Heights, and Solon have much higher median household incomes than Warrensville Heights. The city claims that the “true comparables” are cities with similar incomes such as Bedford, Bedford Heights, Euclid , Garfield Heights, and Maple Heights.

The city maintains that its offer would place the union in the “middle of the pack” with respect to reasonable comparables. It states that its present salary for sergeants is \$61,169 compared to salaries of \$58,624 in Euclid, \$63,432 in Maple Heights, \$66,856 in Bedford, and \$67,538 in Bedford Heights. The city claims that with its proposed 4% pay increases in 2008 and 2009, the sergeants’ salary “would remain competitive with these comparable communities.” (City Pre-Hearing Statement, page 14)

The city argues that with the union’s proposal salaries would “rocket up.” It states that without the lump sum salary increases sought by the union, the salary would increase to \$68,857 in 2007. The city indicates that if the lump sum payments are included, 2007 compensation would be \$78,264, which is more than any eastside suburb.

The city contends that settlements reached in other jurisdictions are highly relevant. It points out that in City of Mayfield Heights and OPBA, SERB Case No. 06-MED-05-0647 (March 28, 2007), this Factfinder stated:

This Factfinder believes that the settlements reached in other jurisdictions are especially useful for a Factfinder in making a recommendation for salary settlement. In any area, whether a small group of cities, such as the contiguous jurisdictions, or a larger group, such as an entire county, there is a hierarchy of salaries, some high and some low. The differences are a function of economic, political, and other forces as well as past bargaining. When a Factfinder grants a salary increase similar to what other jurisdictions have granted, he preserves the hierarchy of salaries that the parties themselves have established.

The city maintains that its offer exceeds settlements in other cities. It states that settlements for sergeants on the east side of Cuyahoga County averaged 3.19% in 2005, 2.99% in 2006, and 3.03% in 2007. The city reports that so far average wage settlements are 3.25% in 2008 and 3.5% in 2009.

Analysis - The parties have offered proposals that are conceptually quite different. The union proposes an agreement to be effective on August 18, 2006, the date the prior agreement expired, and wishes to rely on a rank differential to establish wages for sergeants but also proposes percentage wage increases to guarantee the wage increases awarded to the patrolmen should the Court of Appeals vacate or modify the Conciliator's award. The city seeks an agreement to be effective January 1, 2008, and proposes eliminating the rank differential and simply negotiating wages for the sergeants.

The Factfinder recommends that the union's proposal for a rank differential be adopted but not the language guaranteeing the 4% wage increases independent of the Conciliator's award for the patrolmen. First, the city's wage offer would result in a significant deterioration in the position of its sergeants compared to both the union's comparables and its own comparables. The total compensation, including salary, uniform allowance, shift differentials, and other compensation, for sergeants with ten years of service is as follows:²

² The figures shown in the table should be viewed as estimates. They are calculated from the salaries and other compensation for patrolmen shown in Union Exhibits 6, 7, and 8. The compensation for 2004 for the city's and union's comparable cities are estimated by reducing compensation for 2005 by 3.5%. The compensation for the comparables for 2008, 2009, and 2010 assume that total compensation increases by 3% per year. The figures for the union comparables for 2007 are based on 14 rather than 17 east side cities.

	City	Union	City	Union
<u>Year</u>	<u>Proposal</u>	<u>Proposal</u>	<u>Comparables</u>	<u>Comparables</u>
2004	\$64,064	\$64,064	\$61,577	\$66,158
2005	64,204	66,723	63,733	68,474
2006	64,204	69,345	65,907	71,495
2007	64,204	71,729	68,098	71,923
2008	65,524	-	70,140	74,080
2009	68,144	-	72,245	76,303
2010	68,144	-	74,412	78,592

If the city's comparables are accepted, the sergeants go from being \$2487 above the other departments in 2004, to being \$3894 behind in 2007 and \$6268 behind in 2010. If the union's comparables are used, the results are similar.

The city was unable to make a case for such a drastic loss in the relative wages of its sergeants. While income tax revenues have been flat and year-end balances have declined, the city is financially sound. The challenges it faces are similar to those facing many of the comparable cities.

Second, abandoning the rank differential might create problems for both the city and the union. If the city is able to escape granting the wage increases to the sergeants for 2005, 2006, and 2007 and the conciliation award for patrolmen stands, the result might be patrolmen earning nearly the same amount as sergeants. If the sergeants are able to win the increases it seeks independent of the rank differential and the city is successful in vacating the Conciliator's award, the sergeants could wind up with what would be an extraordinary rank differential. Neither situation would be conducive to good morale or positive labor relations.

The Factfinder rejects the city's suggestion that there is no reason for a rank differential. The parties routinely negotiate rank differentials as a simple method to

establish wages for promoted officers. When the city recently agreed to a rank differential for the lieutenants, it confirmed the utility of the device.

The Factfinder disputes the city's claim that the union's wage demands are contrary to the pattern of increases in the city. First, while the city and the IAFF and the IBT did agree on two increases of 4% followed by a wage freeze, those increases are for 2006, 2007, and 2008. In the instant case the union is seeking 4% wage increases for 2006 and 2007 - - the years when the IAFF and IBT received 4% wage increases.

Second, if there was a pattern for wage increases as claimed by the city, it was broken by the Conciliator in the dispute involving the patrolmen. He awarded what amounted to 4% wage increases for each of three years. Unless the Court of Appeals vacates or modifies the Conciliator's award, the 4% increases awarded to the patrolmen will stand.

The Factfinder recognizes that the wage increases awarded by the Conciliator exceeded those being negotiated at the time. The SERB report on annual wage settlements, which was submitted by the union, indicates that in 2006 wage settlements for police units averaged 3.23% and overall wages increases in the Cleveland region averaged 2.99%. The city's claim that the Conciliator's award was improvident is irrelevant until it persuades a court that the award should be vacated or modified.

The final issue relating to compensation is the union's demand to increase the rank differential from 12.75% to 13%. While the average rank differential in 2006 for the city's comparables was 12.08% and 12.85% for the union's comparables, the city agreed to increase the lieutenants' rank differential to 13% effective August 17, 2008.

On that basis, the Factfinder recommends that the rank differential for sergeants be increased to 13 % on the same date.

Recommendation - The Factfinder recommends the following contract language:

A rank differential of 12.75% shall be maintained between a first class Police Officer and a Sergeant until August 17, 2008, when the rank differential shall be increased to 13%.

4) Article XXIII - Uniform Allowance, Section 1 - The current contract provides for a uniform allowance of \$550 and a maintenance allowance of \$650. The union seeks to increase the uniform maintenance allowance by \$200 effective August 18, 2006. The city rejects any increase in the maintenance allowance.

Union Position – The union argues that its demand should be granted. It points out that the cost of uniform maintenance has risen over the past three years and is anticipated to rise over the next three years. The union adds that the uniform allowance is an important and useful component of the pay package for public safety officers.

City Position – The city argues that the union’s demand has no merit. It claims that the union provided no basis for an increase in the current allowance. The city notes that the majority of the officers do not use the current uniform allowance. It observes that the lieutenants have agreed to the current allowance.

Analysis - The Factfinder cannot recommend the increase in the uniform maintenance allowance sought by the union. It offered no estimates of the cost of uniform maintenance to justify its demand. The lieutenants have agreed to the

continuation of the present allowance. The Conciliator in the dispute involving the patrolmen rejected any increase in the uniform allowance.

Recommendation - The Factfinder recommends the current contract language.

5) Article XXIV - Insurance, Section 1 - The current contract states that the city will provide “hospitalization coverage substantially equal to the Medical Mutual of Ohio major medical coverage plan in effect as of the date of the execution of this Agreement” and requires the city to pay the full cost of the plan. The city proposes maintaining the current coverage and co-payments and other out-of-pocket costs but wishes to add annual deductibles of \$750 for single coverage and \$1500 for family coverage effective January 1, 2008. The union does not oppose the city’s proposed changes but wants them to be effective January 1, 2006.

City Position – The city argues that its proposal ought to be adopted. It observes that the cost of health insurance has risen and employers everywhere have gotten some type of relief. The city indicates that its proposal puts the burden of higher costs on those who use health insurance rather than having everyone pay a share of the premiums.

The city emphasizes that every other bargaining unit has accepted the \$750 and \$1500 deductibles. It acknowledges that those units had a delayed phase-in where it paid the deductibles for the first year. The city notes, however, that the sergeants have already had an additional full year without the deductibles and claims that there is no reason for the continued preferential treatment.

The city opposes the union demand to make the deductible effective January 1, 2006. It states that there is no point in going back two years rather than making them effective on January 1, 2008.

Union Position – The union argues that the city’s proposed changes in health insurance should be effective January 1, 2006, to be consistent with the other units. It contends that the city has the records of the payments it made for each individual so that the proper amounts can be deducted from the wages due each employee when its wage proposal is adopted.

Analysis - The sole issue is the effective date of the \$750/\$1500 deductibles. Since the city has proposed making the new deductibles effective on January 1, 2008, the Factfinder sees no reason to make them effective any sooner.

Recommendation - The Factfinder recommends the following contract language:

The City will continue to pay the full cost of monthly premiums for the plan provided to all employees for the duration of the Agreement and employees shall continue to pay all applicable co-payment/office visits and other associated out-of-pocket cost charges. In addition, effective January 1, 2008, employees shall pay a deductible of \$750 for single coverage and \$1500 for family coverage. The city shall have the right to change providers, however, the current levels of coverage shall be maintained for the duration of the Agreement.

6) Article XXX - Duration, Section 1 - The current contract was effective August 18, 2003, and expired August 17, 2006. The union proposes a three-year agreement effective August 18, 2006, and expiring August 17, 2009. The city seeks a three-year agreement commencing on January 1, 2008, and ending on December 31, 2010.

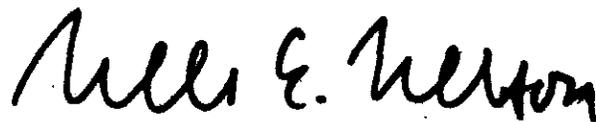
City Position – The city argues that its contract term ought to be adopted. It indicates that the parties are negotiating their first contract and that negotiations have been costly and time consuming. The city worries that if the union’s proposal is accepted, the parties will be back at the bargaining table in less than one year.

Union Position – The union argues that its proposal ought to be adopted. It points out that the sergeants’ contracts have historically expired on August 17 and the fact that the city is trying to vacate the award of the Conciliator for the patrolmen is no reason to change the practice. The union accuses the city of interrupting the collective bargaining process and now attempting to wipe away two years.

Analysis - The Factfinder believes that the wage recommendations dictate a three-year agreement commencing August 18, 2006, and expiring on August 17, 2009.

Recommendation - The Factfinder recommends the following contract language:

This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the OPBA and except as otherwise noted herein, shall become effective on ratification and shall remain in full force and effect until 12:01 a.m., August 17, 2009. If either party desires to make any changes in the agreement for a period subsequent to its expiration, notice of such a desire shall be given prior to applicable statutory deadlines. If no notice to seek modification is given, then the Agreement shall remain in effect for another year.



Nels E. Nelson
Factfinder

December 12, 2007
Russell Township
Geauga County, Ohio