

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
Case No. 07-MED-03-0206
July 20, 2007**

STATE EMPLOYMENT
RELATIONS BOARD

2007 JUL 19 A 11:44

In the Matter of the Fact-Finding Between:

The Ohio Patrolmen's Benevolent Association,
Dispatchers

And

City of Oakwood

APPEARANCES:

For the Union:

Joseph M. Hegedus Labor Counsel
Jim Waitzman Committee Member
Cheryl K. Muceus Local President

For the Employer:

Jeffrey A. Mullins Attorney, Taft Stettinius & Hollister LLP
Jay A. Weiskircher Assistant City Manager
Dave L. Lantz Captain, Public Safety Department

BEFORE RICHARD J. COLVIN, J.D., FACT-FINDER

Government Administration Building
Oakwood, Ohio
June 22, 2007

INTRODUCTION

The Fact-Finder received his appointment on May 11, 2007 in compliance with Ohio Revised Code Section § 4117.14 (C) (3). The parties jointly agreed to a hearing date of June 22, 2007 and such hearing was duly convened as scheduled at 12:30 P.M. The parties mutually agreed that the Fact-Finder mail his written report on or before July 20, 2007. The parties timely provided the Fact-Finder with their respective positions prior to the date of the hearing.

The parties' collective bargaining Agreement (hereinafter "Agreement") was effective from January 1, 2004 through December 31, 2006. Lengthy but productive negotiations resulted in many tentative agreements all of which will be set forth herein and made a part of this Fact-Finding Report.

BACKGROUND

The City of Oakwood is an established residential community of approximately 9, 200 residents that covers an area of approximately three square miles. Oakwood is a full-service city and employs approximately 92 employees in its various departments. Although its population is the fourth smallest of the 15 cities in Montgomery County, Oakwood has made a concerted effort over many years to attract the best available talent by providing its employees with some of the most favorable wage and benefit packages in the region.

The largest department within the City is the Public Safety Department (the “PSD”). The PSD is structured in a unique fashion. Given the City’s relatively small geographical size, its predominately residential character and the costs associated with maintaining separate public safety divisions, many years ago the City decided to organize its PSD so that the same individuals act as police officers, firefighters, and paramedics or emergency medical technicians.

Oakwood’s PSD is the second oldest in the country and one of less than 40 departments nationwide where the same officers perform all three of these safety functions. The PSD is staffed by 25 public safety officers, 5 lieutenants, 2 captains and 1 public safety director. Supporting these public safety officers is a team of four public safety dispatchers and one dispatcher/records clerk. The public safety dispatchers and dispatcher/records clerk are in a bargaining unit that is represented by the Ohio Patrolmen’s Benevolent Association. For all relevant periods, the bargaining unit has been described as “all full-time dispatchers and dispatcher/record clerk(s) employed by the City. The City’s dispatchers work a traditional eight-hour per day, five day per week schedule plus two 12-hour days, then one day off then back for two eight-hour days and then off 4 days. This schedule equals one pay period (8-8-8-8-8-12-12-off-8-8-off-off-off-off). Their duties include answering emergency and non-emergency calls for police, fire and emergency medical services within the City and those surrounding areas for which the City provides mutual aid, as well as maintaining necessary records.

As of the date of this hearing, the following unresolved issues remained:

1. ARTICLE 9. LAYOFF/RECALL
2. ARTICLE 12. WAGES
3. ARTICLE 14. VACATION/PERSONAL LEAVE
4. ARTICLE 15. SICK LEAVE
5. ARTICLE 16. FUNERAL LEAVE
6. ARTICLE 19. HOSPITAL AND MEDICAL INSURANCE

The Parties jointly requested leave to address these open issues prior to the opening of the Fact-Finding Hearing and requested that the Fact-Finder mediate as required. As a result, the following unresolved Articles were tentatively agreed to and initialed by the parties:

1. ARTICLE 9.
2. ARTICLE 14.
3. ARTICLE 15.
4. ARTICLE 16.

I will incorporate into this Report and recommend to the parties the adoption of the following joint settlements entered into by the parties:

- A. All initialed and dated joint agreements entered into prior to the day of this Hearing.
- B. All initialed and dated joint agreements entered into on the day of this Hearing.

The Fact-Finding Hearing was opened at 2:05 P. M. The parties then argued and presented evidence relative to their respective positions on the two remaining open items:

ARTICLE 12. WAGES.
ARTICLE 19. HOSPITAL AND MEDICAL INSURANCE

CRITERIA

When making his recommendations upon the unresolved issues, the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code Section § 4117.14 (C) (4) (e) and Ohio Administrative Code § 4117-9-05 (K).

- (1) Past collectively bargained agreements, if any, between the parties;

- (2) 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;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) The stipulation of the parties;
- (6) 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

1. The Union's position relative to **Article 19 Hospital and Medical Insurance**, is that there should now be a defined cap on covered bargaining unit employee's contributions towards their monthly health insurance premiums. Language was proposed to modify Section 19.1 of the Agreement as follows: ...*"except that in no event will bargaining unit members contribute more than ten percent (10%) of the cost of the City's health insurance premiums, on a monthly basis, for the duration of this Agreement"*. This was rejected by the City.

The Employer's position on **Article 19** is that there be no change to Section 19.1. Except for the Safety Office's contract, the City's three other labor contracts all have language in them indicating the City will provide employees "with group hospital, medical care, and vision insurance to be paid for by the City at the benefit coverage levels equal to those provided to the City's management and office employees."

Contributions towards the monthly health insurance premium by covered employees will be at the same level as the City's management and office personnel.

The Safety Officers contribute 7.5% towards the monthly premium while all other employee groups, including the dispatchers, contribute 10% towards the monthly premium for single and for family coverage.

In Exhibit F, the Employer makes the following comparisons:

Public Safety Dispatchers		
Bi-weekly Health & Dental Contributions		
	<u>8/1/05-7/31/06</u>	<u>8/1/06-7/31/07</u>
Health Insurance Family	\$18.69	\$42.39
Dental Insurance Family	<u>\$13.76</u>	<u>\$ 6.88</u>
Total	\$32.45	\$49.27

In the period 8/1/05-7/31/06, employee contributions were 5% for Health and 40% for Dental.

In the period 8/1/06-7/31/07, employee contributions were 10% for Health and 20% for Dental.

The Employer stated that over the last eight years the City's health insurance costs for a family plan have increased by 119%. Considering the current health insurance market, future annual increases of 10% to 15% are expected over the term of this Agreement, 2007 through 2009. In 2000, the annual cost to the City for a family health insurance plan was \$6,556.08. In 2006, that same family premium increased 68% to \$11,021.00. Members of the FOP are currently contributing \$68.88 per month while all other City employees with a family plan are currently contributing \$91.85 per month; the remaining \$826.62 of the monthly premium is paid by the City. The City first implemented an employee contribution of 5% in November, 2003.

Although health insurance costs increased by more than 14.5% during the ensuing three-year period, the 5% employee contribution was only raised to 10% in August, 2006. At the same time, the City lowered employee contributions on dental insurance from 40% to 20%.

The City at this time provides its employees with health insurance through Anthem Blue Cross, a plan it describes as having a “rich benefit program”.

In its argument, the Employer claims that many public sector employers are requiring their employees to contribute well in excess of 10% of the monthly premium. Union’s Exhibit 18 (in part) while it does not give us a fixed date for reference or a population comparison shows:

Insurance Contributions

<u>Jurisdiction</u>	<u>Employer % Contribution</u>	<u>Employee % Contribution</u>
Clayton	93%	7%
Huber Heights (hired prior to 1994)	95%	5%
(hired between 1994-2003)	90%	10%
(hired after Aug. 2003)	85%	15%
Kettering	90%	10%
Miamisburg	90%	10%
Moraine	100%	
Oakwood	90%	10%
Trotwood	90%	10%
Vandalia	90%-92.5%	7.5 to a max of 10%
West Carrollton	88%	12%

This Exhibit also does not appear to indicate that the Employer is significantly out of line in requiring a 10% employee contribution.

RECOMMENDATION

Based upon the arguments and evidence submitted and a review of the Criteria presented herein, I have concluded that there should be, at this time, no change to the provisions of the Agreement at 19.1 and therefore the City's position is affirmed.

I have received no compelling argument or evidence that bargaining unit members should contribute no more than ten percent (10%) of the cost of the City's health insurance premiums, on a monthly basis, for the duration of this Agreement. A ruling sustaining the Union's could, in my opinion, have the effect of putting the Employer at a disadvantage for the life of the Agreement. My responsibility is to attempt to reach a rational and reasonable conclusion after reviewing the testimony and the evidence. Fact-Finding is not, nor should it be considered a substitute for the collective bargaining process. The City's analysis of health insurance costs and its estimates for future increases appear to me to be a valid position: Health insurance costs are historically more likely to increase than to decrease in the period covered by the term of this Agreement. The increase in employee health insurance contributions that was put into effect by the City during the term of the preceding Agreement was reasonable and to some extent offset by a decrease in those employees' contributions to their dental insurance.

The **2006 SERB** Report on Health Insurance Costs in Ohio's Public Sector¹ several statistical tables are helpful in analyzing premiums paid in our case. Regional or City premiums or cost projections appear to be the most relevant.

¹ Refer to Union's Exhibit 19

On page 18, Cities of less than 25, 000 in 2005 a Single premium was \$354.96 while a Family premium was \$940.28. In 2006, a Single premium was \$400.00 while a Family premium was \$1,048.37. On page 21, comparing costs between the various regions, in 2005 the Single monthly medical premiums increase in Southeast Ohio was 9.9% and 11.8% for Family premiums. As to the percentage of the health insurance premiums paid by jurisdictions, page 24, there are no extreme values, in that all premiums paid by employers and employees by type of plan are similar in percentage to each other. Single coverage typically has the highest contribution by the employer, but the difference between this coverage and others is minimal. In Cities in the percentage paid by the employer was 93.9% single and 93.5% family while the percentage of the premium paid by the employee was 6.1% single and 6.5% family.

This Fact-Finder also found the Report and Recommendations of Fact-Finder Daniel N. Kosanovich issued November 22, 2006², an interesting study of the bargaining history of the City. The arguments pertaining to health insurance/wages are somewhat similar to those made in the instant matter. His comments on the results of the Final and Binding Award of Labor Arbitrator Frank A. Keenan³ were also helpful in making the determination in this matter. See Union Exhibits 6 and 8.

² FOP Lodge 107 and City of Oakwood

³ Interest Arbitration City of Oakwood and Fraternal Order of Police Lodge 107 issued December 30, 2003

2. The Union's position on **Wages Article 12.** was that bargaining unit members' wages be increased 4.5% the first year of the Agreement; 4.5% the second year; 4.5% the third year, at each step and that this is the more reasonable proposal. The Employer's final position on wage increases was **2.75%, at each step, each year** for three-year term of the labor Agreement. During summation, the Union amended its final position to reflect a **4%** increase the first year of the Agreement, a **4%** the second year and a **4%** the third year, at each step. There is no disagreement between the parties as to the effective date of the proposed wage increases: Retroactivity was not disputed.

The Union in support of its position on **Article 12 Wages**, has presented a complete and carefully prepared set of Exhibits including articles explaining the proposed Countywide Dispatch System, Exhibit 1; statistics pertaining to the Employer's financial position; and the CPI, Exhibits 2 through 5 all of which I have reviewed. Of course, the Employer has not declared that it lacks the resources to pay for the cost of the wage increases or, had it been imposed, the "hard cap" on the health insurance premiums proposed by the Union.

The Employer in presenting its position on **Article 12 Wages**, again points out that it has focused great attention over the last two years on controlling wage increases for all of its employee groups. In this group, the dispatchers for example, from 1996 through 2002, the increases dropped, remaining in the range of 3.5% to 4.0%, with only one exception 4.75% in 2001. Since 1998, the first year this group was represented by a union, their annual increases have remained at an average of 3.85%. During only one of these years did their wage increase exceed 4%.

The Employer's contends that the Union's demands are excessive given COLA statistics, the City's internal comparisons and wage increases by comparable jurisdictions. They would also be internally unfair, unsustainable and a fiscally irresponsible use of public funds. The City believes in modest increases, we do not want drastic changes.

I have reworked Employer's Exhibit A to eliminate the year 2007 and both the DPSU and the Management/Office employees:

Employee Group Wage Increases as a percent for the period 1998 through 2006

Safety Officers FOP	41.20%
Lieutenants OPBA	34.04%
Dispatcher/Records Clerk(s) OLC	34.70%

In 2007, the Safety Officers received a 5% wage increase and in 2007, the Lieutenants received a 4% increase.

Employer's Exhibit C does not provide me with sufficient data for analysis.

In closing, the Employer contends that the City must control wage rates so that it does not find itself in the unenviable position shared by many other Ohio jurisdictions: Being financially unable to provide fair compensation to its employees on its own accord. The Employer did make an interesting observation in its summation: "Ability to pay does not equate to an obligation to pay."

RECOMMENDATION

The Employer's rationale is sound in that the City appears determined to remain fiscally prudent in the management of its funds and its assets. A review of the Accountants' Compilation Report as of December 31, 2006 submitted to City Council⁴ indicates that the City is well managed and in good financial condition, helped in no small measure by large estate taxes received over the period 2005-2007. The City of Oakwood is recognized beyond the geographic limits of Montgomery County as being a good place to live and a good place to work. The responsibility of the parties is to maintain those conditions for their continuing mutual benefit. My responsibility is recommend a reasonable and rational proposal for a three-year wage increase upon my review of the testimony and of the evidence and the Criteria set forth herein.

According to the Employer, the City of Oakwood made a concerted effort over many years to attract the best available talent by providing its employees with some of the most favorable wage and benefit packages in the region. Those employees presumably include these five employees comprising this bargaining unit. Now, the Employer contends that the wage proposals submitted by the Union for the years 2007-2008 and 2008 are "internally unfair, unsustainable and a fiscally irresponsible use of public funds." By "internally unfair", I believe that the Employer is referring to the employees in other City Departments: Public Works, Safety Officers, Lieutenants and Management/Office. Employer's Exhibit A has been previously referenced in this Report and details the five Employee Groups and their wage increases from 1998-2007.

⁴ See Union Exhibit 2: Report of Clark, Schaefer, Hackett & Co., Certified Public Accountants dated May 30, 2007

On review, I find nothing that appears “unfair” in the Union’s wage proposals versus the wage increases shown for the other four groups in this Exhibit. In fact, when dealing with small bargaining units those familiar with the collective bargaining process normally take into consideration such units have little or no leverage to influence the final settlement. As for being “unsustainable”, I have heard no testimony nor have I seen any evidence to support that assumption. “A fiscally irresponsible use of public funds” the rhetoric is not supported by the facts.

While the “drastic change” introduced by Arbitrator Keenan by recognizing PSO’s premium contribution for health insurance is now only bargaining history, its effects linger. Arbitrator Keenan made the assumption that those health care premiums would increase and he was correct. In arguing for the rejection of the Union’s hard cap on employee health insurance premium contributions, the Employer notes in its Brief that “health insurance costs continue to increase at a rate which far outstrips inflation” and, “Considering the current health insurance market, future annual increases of 10% to 15% are expected over the term of this Agreement”. The Employer also argues that...”studies have shown that the more financially involved employees are with their health insurance benefits, the more likely they are to become better educated consumers thereby making more informed choices on their health care options and treatments.” The more involved then the City is financially with its health care package could make it a more informed procurer of such benefits.

There is a *quid pro quo* here: The Employer's right to increase bargaining unit members' health insurance premiums has been affirmed in this Report; in my opinion and in fairness, employees' wage increases should be reasonably adjusted to compensate them for such an eventuality.

By any measure, the Employer's proposed wage increase is unrealistic: 2.75%, at each step, each year, for three years. The Union's proposed wage increase is more realistic: 4% the first year of the Agreement; 4% the second year; 4% the third year, at each step. Reviewing the bargaining history of the whole Safety Department, a process I consider more informative, the Safety Officers received a 5% increase in 2007 and the Lieutenants received a 4% increase.

I recommend the following wage increases, which represent in my opinion a reasonable and fair compromise. The Employer's salary preeminence should be maintained while allowing it to remain fiscally responsible. Bargaining unit members are also provided with some protection in the event of health care premium adjustments:

Wage Increases of: 3.5% the first year of the Agreement, at each step
 4% the second year of the Agreement, at each step
 4% the third year of the Agreement, at each step

Signed and dated in the City of Mason, County of Warren, State of Ohio this 18th day of July 2007

Respectfully submitted,



CERTIFICATE OF SERVICE

This will affirm the Fact-Finding Report in this matter was served to the below named parties at the stated addresses:

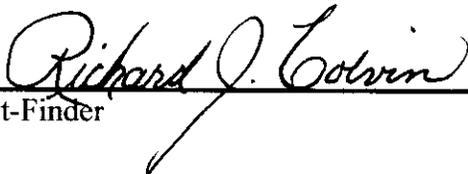
Joseph M. Hegedus, Esq.
Ohio Patrolmen's Benevolent Association
92 Northwoods Boulevard, Suite B2
Columbus, Ohio 43235

Jay A. Weiskircher
Assistant City Manager
City of Oakwood
30 Park Avenue
Dayton, Ohio 45419

By U.S. Postal Service, Overnight Mail, on July 18, 2007

A copy of this Report was submitted by U. S. Postal Service, First Class Mail on July 18, 2007 addressed to:

Edward E. Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213


Fact-Finder
