

IN THE MATTER OF FACT-FINDING 2007 NOV 19 P 2: 26

BETWEEN

THE CITY OF CORTLAND, OHIO

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

BEFORE: William C. Binning Ph.D.
Fact finder

SERB CASE NO.: 07-MED-03-⁰³²⁷~~1327~~

PRINCIPAL ADVOCATE FOR THE UNION

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INTRODUCTION

The bargaining unit, which consists of nine officers, is represented by the Ohio Patrolmen's Benevolent Association. The officers provide law enforcement services to the City of Cortland that include patrol duties, crime prevention and detection, investigations as well as transportation of suspects/charged individuals. The unit also provides support to the local school system.

The City of Cortland has a population of over 6,800. It is located in Trumbull County near Mosquito Lake. The Police Department is funded by three property tax levies. The City has not imposed a wage tax. For the first time, the parties negotiated to a complete tentative agreement but that agreement was rejected by the City.

Both advocates provided very helpful pre-hearing briefs for the fact-finder that helped to clarify their parties' positions on the outstanding issues.

The hearing was held on November 9, 2007 in the Cortland Government Center in Cortland, Ohio at 10:00 a.m.

The parties have a mature relationship. The parties made clear and forceful presentations of their respective positions on the issues. Both sides were well prepared for this hearing.

OUTSTANDING ISSUES

Prior to the opening of the hearing there were 8 outstanding issues:

1. Special Leave –Garrity Rights
2. Training Language
3. Drug Testing Policy
4. Uniform Allowance
5. Compensation
6. First Responder Pay
7. Consistency of Agreement
8. Health Insurance Premium Sharing

In accordance with SERB guidelines and O.R.C. Section 4117.14 [C] (3) (f) “Prior to initiating hearing procedures the fact finder is encouraged to attempt mediation to resolve issues at impasse.” (SERB FACT FINDING GUIDEBOOK, page 13).

In response to the fact-finder’s inquiry about mediation, the parties successfully resolved three of the issues through caucusing and negotiations. The representatives of each of the parties have signed copies of the agreed upon language which is offered below as part of this award:

Article 24/Section 3
SPECIAL LEAVES

(C) Deadly Force- In the case of the use of deadly force, the involved member shall be placed on administrative leave without loss of pay or benefits pending the results of the pre-disciplinary hearing, which the employee could testify at with their Garrity rights, are received by the employee or the City, determine that no discipline is forthcoming. Furthermore, the department’s staff psychologist or certified support group will be notified to provide counseling for the involved member or members. If no staff psychologist or support group is available, one will be assigned for that particular circumstance.

Article 33
UNIFORM ALLOWANCE

Section 1: Effective July 1, 2007, all newly hired probationary employees shall receive a pro-rated share of the uniform allowance of nine hundred dollars (\$900)

within thirty (30) days of his appointment. All new officers shall receive a weapon, holster, magazine pouch and the duty belt when they are hired.

Section 2: Effective July 1, 2007, all non-probationary employees shall receive an annual uniform allowance and off-duty weapon allowance in the amount of nine hundred dollars (\$900). This amount shall be paid with the first payday of July.

Year 1: Payment on the first payday in July 2007

Year 2: Payment on the first payday in July 2008

Year 3: Payment on the first payday in July 2009

Article 36 TRAINING

Section 1. Recognizing the need for employees to receive training on an on-going basis to ensure that up-to-date methods and procedures are used in law enforcement, the Employer shall consider requests from employees to attend such training.

Section 2. Requests for training must be approved or denied by the Chief or his delegate no later than four (4) weeks prior to the beginning of the requested class or within one week (five working days) of the request if the request is submitted with less than four (4) weeks before the beginning of the class. Requests for training will not be unreasonably denied. Payment for any approved training shall be made directly to the provider. Any legitimate expense, including travel time, incurred by the employees attending approved training, shall be reimbursed following submission of receipts.

Section 3. Members of the bargaining unit shall be given first consideration for the use of the training budget. Each bargaining unit member shall be compensated for training days in accordance with state and federal laws. If an employee is scheduled to be trained on an off day, that day shall be treated as their regularly scheduled work day in place of another work day that shall be mutually agreed upon by employee and the City within the same pay period.

Section 4. Bargaining unit members will be allowed a minimum of sixteen (16) hours of certifiable training per year per officer. All training mandated by Federal, State or City law shall not be included in the calculation of the sixteen (16) hours.

FACTFINDING

After deliberation on the above issues was concluded, a Fact Finding hearing was held on the five remaining issues.

OHIO REVISED CODE

The fact finder took into account the Ohio Revised Code, Section 4117.14 [C] (4) (E) which states the criteria to be considered by fact finders in making their award:

1. Past collective bargaining agreements, if any, between the parties;
2. 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.
3. 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;
4. The lawful authority of the public employer.
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

DRUG FREE POLICY

The first outstanding issue¹ addressed by the parties was Drug Free Policy.

Employer position: The Employer argued that the development and implementation of the Drug testing policy was necessary because the City had lost its preferred discount with Ohio Bureau of Workers Compensation due to recent claims. The City would enjoy a discount on its workers comp insurance, if it adopted a drug policy acceptable to BWC. The City offered language to be inserted in the Contract and a more extensive document entitled “DRUG-FREE WORKPLACE POLICY OF CITY OF CORTLAND, OHIO” dated 06/07. At the hearing this was labeled U-3.

¹ Please note that the Article numbers in this report are out of order. The organization of the issues in this fact-finding report reflects the order in which the issues were addressed.

The City indicated that this was a standard template developed by an outside service provider. This document was offered as an Appendix to the new Contract.

Union position: The Union objected to a Drug Free Policy. If there was to be a Drug Free Policy the Union did offer language that insured due process for its members. The Union also offered language changes for the Drug Policy that was offered into the record as an Appendix document. The Union argued that when Police Unions in neighboring political subdivisions accepted a drug testing policy they received some contract benefit such as an additional week of vacation.

Discussion: The language proposed below is designed to meet the City's interest to qualify for the BWC discount, and also to provide the due process protection requested by the Police Union.

Please note that the first part of Article 39 offered below uses the language that was in the Tentative Agreement, which is

close to the language in the City submission at the hearing. However, the offered language included "...as approved by the Employee Health Committee." It is not clear how that Committee is to be formed and if it is the same committee that is offered in the Health Premium Sharing language, which is treated later.

Therefore, that language has been changed in this recommendation.

Recommended language:

Article 39

DRUG FREE WORKPLACE:

Section 1: It is the intent and obligation of the City to provide a drug free work Environment. This policy has been developed in recognition of and in response to the rights of each individual as well as our responsibility to assist in the elimination of this national problem; particularly when the problem concerns our employees. The City Drug Free Workplace Policy is included as part of this agreement in Appendix B and will only be modified as required by law or as agreed to by the City and the Police Union.

Section 2: When reasonable suspicion is invoked by the Chief or his designee to trigger a drug test, the incident must occur while the police officer is on duty. The Chief and his designee must be properly trained in the detection of such reasonable suspicious behavior before the City can order a test. There has to be a proper chain of evidence for the test results. There must be sufficient evidence held up to one year so that independent verification of results can be requested by the officer or the Union, at the City's expense. All positive results shall be verified by an independent lab prior to the notification of the City, Union or Officer. All testing results will be private and withheld from the public. Officers shall be entitled to union representation during any portion of the testing process. Any Union official requested shall be paid their regularly hour rate of pay, if working, and shall be paid based upon being called into work, based upon the callout provision of the contract.

(The following language changes are recommended for the “Drug-Free Workplace Policy of the City of Cortland” as presented into evidence on November 9, 2007. This language need not appear in the main body of the Contract if the language changes recommended below are included in the document in the Appendix.)

This fact-finding report is also making recommended language changes in the document Appendix B “Drug –Free Workplace Policy of City of Cortland, Ohio” dated 06/07. Language changes offered below.

Insert on page 6 of above document in the last paragraph: “Must be able to contact by phone and given a copy.”

Changes on page 7 of document cited above: 2nd paragraph under **VI EMPLOYEE’S RIGHTS** to read “If the employee fail to contact the MRO within ten (10) working days of having been instructed to do so...”

Changes on page 7 of document cited above: 3rd paragraph 2nd sentence: “this retest may be authorized by the MRO only with the employee’s written request received within (4) working days on their notification of a positive result.”

COMPENSATION

Union Position: The Union’s proposal for the rate of pay for its members for a three year contract is:

July 1, 2007, 4.5% wage increase across the board.

July 1, 2008, 3.5% wage increase across the board.

July 1, 2009, 3.5% wage increase across the board.

That is a total percentage increase of 11.5% for the contract.

The Union argues that its compensation is behind Police Officers in comparable political subdivisions in Trumbull county and Northeast Ohio. The Union offered extensive

data to support its contention. They offered both incorporated and unincorporated political subdivisions. There is often a debate whether townships are suitable comparisons for incorporated cities. The Cortland Police were willing to offer townships as comparables, which they argued further validated their claim that their pay was below average.

The offered comparables by the Police were not challenged by the City.

The question of whether or not pension pick-up was included for all the offered political subdivisions did raise questions about the comparability of some of the data. The Union also argued that the City of Cortland is in good shape financially and it can afford to raise salaries to the requested levels.

Employer Position: The City of Cortland offered:

July 1, 2007 = 5% wage increase

July 1, 2008 = 3% wage increase

July 1, 2009 = 2% wage increase

The City Finance Director offered a spread sheet that showed the different fiscal consequences for the City based on the Union and Management financial proposals. Even under the City's proposals, there was a projected deficit in the later years of the contract. That is, the projected expenditures would exceed the projected revenue generated from Cortland's 3 police levies. The City's general fund data was not offered into evidence. The wage offer of 5%, 3%, and then 2% was designed to emphasize the difficult financial position this pay raise would place the City of Cortland in the last year of the contract.

Discussion: Despite the arguments of the Union that Cortland has a stable revenue base and is in good fiscal condition, that City, like every other political subdivision is not immune from the fiscal

consequences of the widespread industrial decline in northeast Ohio.

The recommendation is to accept the 5%, 3%, 2% final offer of the City.

This is a total of 10% over the life of the contract, which was the amount agreed to in the Tentative Agreement.

ARTICLE 29 COMPENSATION

July 1, 2007= 5% wage increase is to be retroactive to July 1, 2007

July 1, 2008= 3% wage increase

July 1, 2009 = 2% wage increase

Total 3 years 10% wage increase.

FIRST RESPONDER

Union Position: The Union is asking for a 1.5% compensation for the growing risk for the Police who are the first responders to dangerous situations. This is also known as hazardous duty pay. It is additional payment to these employees for the heightened sense of danger they face. This pay is in recognition that this is much more dangerous work than the work faced by some other City employees. This pay is not rolled in the base salary.

City Position: The City argued that this creates pattern bargaining problems for them. The City objected to this pay. The City raised concerns about what language would be used for the term “salary”. How would the proposed benefit be calculated? Reference was made to the tentative agreement.

Discussion: There is no question that the Police Officer’s duties place him/her in great danger and that danger is increasing. It is also true that it is becoming more difficult to recruit Police

Officers in many areas of the country. The danger of the job and the relatively low pay are certainly reasons for that. The fact finder recognizes the concern of the City about the consequences of this proposal and pattern bargaining. It should be stressed that this fact-finder makes this recommendation because of the danger inherent in the job of Police Officers. Any other organized group of public employees that attempts to bargain for this allowance, based on the Police Contract, must make the case that the danger faced in their job is equal to or more dangerous than a Police Officer's. The term, Hazardous Duty pay, might capture the inherent danger for the Police Officer more effectively than First Responder.

The recommendation then is to accept the Union's position on this issue:

Recommended language:

ARTICLE 34

MISCELLANEOUS

Section 6: Due to the inherent danger associated with being a Police Officer, and usually the first to arrive at often very dangerous situations, all non-probationary employees shall receive 1.5% of the employee's day shift rate of pay (hourly rate+longevity +education pay) on the first full pay in January of each contract year.

CONSISTENCY OF AGREEMENTS

Position of the City: The City proposes to eliminate what it calls the 'me too' language in the Police Contract. The language triggers a reopening of the contract, if any other City union receives a pay package greater than the Police Union's contract. This language is partially a result of the fact that in Cortland the Police Contract is usually settled before the Firefighters contract and the Service workers contract. It was recommended for the expiring contract by Fact-finder Stein. In his award he pointed out that another unit received a higher percentage increase after the Police settled their contract.

The City argues that the language is moot. The City argued that it was never intended to be carried on in future contracts.

Position of the Union: The Union argues that this language is necessary protection because they are the first Union that negotiates in Cortland, when all the contracts are up. The Union believes it still needs this protection and that it earned this language through the collective bargaining process in Ohio.

Discussion: The Union bargained for this language in the last contract negotiations. The City did not meet the burden required to remove existing language. The Union position is recommended.

Recommended language:

ARTICLE 38

CONSISTENCY OF AGREEMENTS

Section 1: The City agrees to reopen negotiations as to the contract rate of pay set forth in Article 29, COMPENSATION, within 30 days of an agreement with any other City union that includes a contract rate increase in excess of 10 percent over the 3 years of the Northern Ohio Patrolman's Benevolent Association Contract.

PREMIUM SHARING

City Position: The City is asking the employees to pay 5% of their health care premium. The City argues that premium sharing is the trend in the industry. They maintain that premium sharing is what is going on in the private sector and needs to be adopted in the public sector.

The City argues that if the employee and/or the union pay part of the escalating costs of health care that they will work to reduce the costs of health care. The City Finance Director offered very good data on the City's recent, current, and projected health premium costs and what the individual Police Officer would have to pay with the proposed 5% premium share.

Union Position: The Union argues that this demand to pay part of the insurance by the City is political. The Union argues that no one in the City is paying now. The Union offered a few comparables of small neighboring municipalities where the Police Union members are not paying or paying very little of their health care premium. The Union argues that the proposed premium share for certain members was excessive.

Discussion: First, regarding the objection that this demand is political. It is true that public employees live in a fishbowl and their pay and benefits are public records, unlike private sector employees. Issues raised by local elected officials are often a result of what is on the mind of the public. In recent years, premium sharing has become a key demand by local elected officials and appointed public boards that deal with public sector collective bargaining agreements and it is often a source of collective bargaining impasse.

The City is obviously trying to establish this issue for pattern bargaining. If they are successful in getting this language into the

Police contract, they will want all unions to pay a part of the premium.

However, to ask a Police Officer, with a family, to pay a \$903.48 premium share this year, and have a projected payment of \$1,269.12 for the last year of this contract, is excessive. It was established at the hearing that the compensation for this bargaining unit is at best average. Finally, the introduction of premium sharing in public sector contracts is usually gradual and not designed to shock the employee. Therefore it is recommended that the premium sharing caps offered below will be imposed for the life of this contract.

The City language is recommended with the addition of premium caps as set out below.

Recommended language:

ARTICLE 37

INSURANCE

Section 1. The City agrees to make available a group health insurance plan, including a prescription drug program and vision program to all full-time bargaining unit employees at the same or comparable benefit levels as in effect 9/1/2007.

The Employee may elect single or family (dependent) coverage.

The Employer will pay 95% of the premium. The Employee will pay 5% of the premium or the monthly cap amount stated below, whichever is less. This will go in effect Jan 1, 2008.

Date in effect	Single Coverage Cap	Family Coverage Cap
Jan. 1, 2008	\$20.00	\$40.00
July 1, 2009	\$ 25.00	\$45.00

HEALTH CARE COMMITTEE

The fact-finder separated this issue from the premium sharing issue.

The Employer offered language on creating a Health Care Committee with its premium sharing language. At the hearing, the two parties did not seem very far apart on this issue, just unsure how they want to proceed and what they are willing to agree to.

This takes cooperation. The fact-finder thinks it would be imprudent to recommend his view of what the committee should do and how it should proceed. The parties need to talk more about the form and function of this proposed committee.

Health Care Committees can be helpful in dealing with health insurance issues. For example, if the recommended premium sharing and caps are accepted by the parties as part of this contract, the parties might explore federal tax laws related to health expenditures, and the real cost of the premium sharing can be mitigated.

More significantly, the cost of health insurance information presented by the City Finance Director at the hearing points to the need for all parties to work to reduce premium costs.

Since the health care committee issue needs more thought and negotiating by the parties, the following language is recommended for this contract.

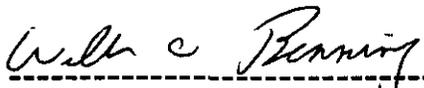
ARTICLE 37

INSURANCE

Section (to be determined) The parties agree to continue discussion about the formation and function of a Health Care Committee.

During negotiations, mediation and fact finding the two parties reached tentative agreement on a number of issues. Those tentative agreements are part of the recommendations of this report.

The Fact-finder respectfully submits the above recommendations to the parties on the 17th day of November 2007 in Mahoning County, Ohio.

A handwritten signature in cursive script, reading "William C. Binning". The signature is written in black ink and is positioned above a horizontal dashed line.

William C. Binning Ph.D.
Fact finder