

**IN THE MATTER OF FACT-FINDING
BEFORE GREGORY J. LAVELLE, FACT-FINDER**

2008 MAR -3 P 2: 43

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION CASE NO. 07-MED-06-0691

AND

**RECOMMENDATION OF THE
FACT-FINDER**

STATE EMPLOYMENT
RELATIONS BOARD
2008 MAR -3 P 2: 44

CITY OF BEDFORD HEIGHTS

FOR THE EMPLOYEE ORGANIZATION:

**Kevin Powers, Esq.
Cynthia Lee-White
Tyrone C. Burton**

**Attorney/Advocate
Committee Member
Committee Member**

FOR THE PUBLIC EMPLOYER

**Kenneth A. Schuman, Esq.
Mark A. Cegelka
Timothy Kalavsky
William Schultz**

**Attorney/Advocate
Director of Finance
Chief of Police
Commander**

February 29, 2008

DESCRIPTION OF THE UNIT

The bargaining unit covered by this Fact-Finding Report (hereinafter, the Corrections Unit) consists of approximately twenty-three (23) employees of the Bedford Heights Police Department in the ranks/classifications of Correction Officers and Officers-in-Charge who work in the Bedford Heights Jail.

BARGAINING HISTORY

This Fact-Finding Report relates to a collective bargaining agreement between the City of Bedford Heights (hereinafter, the City) and the Ohio Patrolmen's Benevolent Association (hereinafter, the OPBA) which will cover Correction Officers and Officers-in-Charge. The prior collective bargaining agreement of the parties had a duration of January 1, 2005 through December 31, 2007. Other units represented in the City include the Fire Department, Patrol Officers of the Police Department, Police Supervisors, Dispatch, Service Department and Cooks and Bakers.

The Fire Department unit in the City of Bedford Heights has settled a three (3) year contract with increases of three percent (3%) per contract year and the unit of Patrol Officers in the Police Department is reported to have agreed in principle to a three (3) year agreement which also includes increases of three percent (3%) in each contract year. It is reported, however, that there remain some minor economic items to be resolved with respect to that contract.

The wage proposal of the City made to the Corrections Unit had been made based on the City proposal which would not require an increase in employee contributions towards health care. The Health Care proposal of the City appears to be consistent

citywide. The OPBA proposal regarding wages had, in earlier stages, included provisions which would have included increases in employee contributions. The OPBA, however, in Fact-Finding, reduced its wage demand and dropped its proposal that the level of employee contributions be increased.

The unit covered by this Report has traditionally received the pattern of increases afforded to the Bedford Heights Police Patrol Unit. In the prior agreement, the units had received the same percentage wage increases. In the most recent agreement, however, the Patrol Unit had received a bonus based on certain certified skills. That increase had been phased in over the course of the collective bargaining agreement, being one hundred fifty dollars (\$ 150.00) in the first contract year, three hundred fifty dollars (\$ 350.00) in the second contract year and six hundred dollars (\$ 600.00) in the third contract year.

INTRODUCTION

Preliminary Matters:

The Fact-Finder was appointed on November 27, 2007. The parties thereafter mutually extended the period for negotiations and the issuance of the Fact-Finding Report. A Pre-Hearing Telephone Conference was set for February 21, 2008. The parties were requested to provide to the Fact-Finder prior to the Pre-Hearing Conference copies of all tentatively agreed items, including a list of all items which were agreed to remain unchanged from the prior agreement.

The Fact-Finding Hearing was scheduled for February 22, 2008 with a telephone Pre-Hearing Conference being scheduled for February 21, 2008. Copies of the current

Collective Bargaining Agreement and the Position Statements of each party were timely received by the Fact-Finder as required under the Ohio Administrative Code. A review of the City Position Statement indicated that there were several issues reported as outstanding which were not contained in the OPBA Position Statement; Item 5, Access to Compensatory Time Ledger and Item 6, Leave Requests. The City Position Statement further indicated that it considered the OPBA to be proposing an increase in employee contributions for health care.

The Pre-Hearing Conference was held on February 21, 2008. The parties were requested to provide to the Fact-Finder a copy of the extension/retroactivity agreement and were requested to come to an agreement for a date-certain for the issuance of the Fact-Finding Report. The parties, at the Pre-Hearing Conference, indicated that there were no tentatively agreed items modifying the prior collective bargaining agreement and stipulated that, except as modified by proposals of either party, the parties had agreed that all of the terms of the prior collective bargaining agreement were to continue in the succeeding agreement.

HEARING-IN-CHIEF

The Fact-Finding Hearing was conducted pursuant to the Ohio Collective Bargaining Law and the Regulations of the State Employment Relations Board on February 22, 2008 in the City Hall of the City of Bedford Heights. The parties were given full opportunity to present testimony and documentary evidence in support of their respective positions.

In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05(K) of the State Employment Relations Board:

- (1) Past collective bargaining agreements 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 the 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 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment

The parties presented evidence and argument, being represented in the hearing by the following individuals:

FOR THE EMPLOYEE ORGANIZATION:

Kevin Powers, Esq.	Attorney/Advocate
Cynthia Lee-White	Committee Member
Tyrone C. Burton	Committee Member

FOR THE PUBLIC EMPLOYER

Kenneth A. Schuman, Esq.	Attorney/Advocate
Mark A. Cegelka	Director of Finance
Timothy Kalavsky	Chief of Police
William Schultz	Commander

PRELIMINARY DISCUSSIONS

The parties provided to the Fact-Finder a copy of the extension/retroactivity agreement. The parties reviewed outstanding matters as reported in their respective Position Statements. It was confirmed that no issue remained to be presented to the Fact-Finder with respect to the issues of Access to Compensatory Time Ledger and Item 6, Leave Requests. It was also confirmed that the OPBA no longer proposed increases in the employee contribution toward health care.

The City was asked to provide a proposed Wage Scale since its proposal, as stated in its Position Statement, contained a description of its wage proposal, rather than the actual language as the City would have it appear in the collective bargaining agreement. A proposed wage scale was then received.

In further discussions, agreements were reached with respect to several proposals. The OPBA agreed to the City proposal regarding Drug Testing, agreeing that the drug testing language of the City be incorporated into the collective bargaining agreement as Article 19, Section 8. The OPBA, further agreed to the City proposal regarding Clothing/Maintenance Allowance. The OPBA further agreed to the City proposal regarding High Risk Injury Leave, agreeing that said proposal be incorporated into the collective bargaining agreement as Article 10, Section 5 and that the prior memorandum of the parties regarding Holiday Pay be incorporated into the collective bargaining Agreement as Article 8, Section 6. Later at hearing, the OPBA agreed to the City proposal regarding the Sick Leave Incentive. The parties agreed to a date-certain for the issuance of the Fact-Finding Report, the report to be transmitted to the party representatives by express mail and email on February 29, 2008.

The parties proceeded to hearing on the remaining issues. Evidence and argument was presented with respect to three (3) issues: the OPBA proposal with respect to wages (Wage Issue); the OPBA proposal with respect to a premium for employee language skills (Language Bonus Issue) and the OPBA proposal with respect to bonus for employee obtaining certifications for various job-related skills (Certification Bonus Issue).

DISCUSSION OF THE ISSUES

THE WAGE ISSUE

Position of the OPBA

The OPBA proposed wage increases of 3.25%, 3.5% and 3.75% per contract year. The OPBA argued that the average wage increase for “police units” and “city units” in the State of Ohio for 2007 were approximately 3.25%. Referring to the 3%, 3%, 3% wage increases reported to have been accepted by other units, the OPBA argued that to tie this unit to the other unit’s wage increases would deny this unit its bargaining power. The OPBA argued that the argument of the City was not an “inability to pay” argument, but, instead an “unwillingness to pay” argument.

Position of the City

The City proposed wage increases of 3%, 3% and 3%. The City argued that the Corrections Unit in the City of Bedford is the highest paid corrections unit in the state. The City further argued that its proposal is highly equitable since it does not propose to increase the employee contribution toward health care. The City argued that the Fire Unit had already approved wage increases of 3%, 3% and 3% and that the Police Patrol Unit

had also agreed to such increases. The City further indicated that revenues for the past several years had not increased and that a deficit was projected for 2008.

DISCUSSION OF THE WAGE ISSUE

The argument of the OPBA for a wage increase of 3.25%, 3.50% and 3.75% is based on the average wage increases granted in "City" and "Police" units in 2007 as reported by SERB. As with any wage comparable, there is no real basis to determine whether the cited "comparables" are really comparable since what is truly relevant is the total compensation package, rather than a particular line item. An "increase" of three percent (3%), coupled with a dramatic increase in employee health contributions may not represent an "increase" at all, while a two percent (2%) wage increase, coupled with increases in other areas of the economic package may be far greater than a reported three percent (3%) increase. Even where only a single line item represents the only change in all the contracts, the "average" includes contracts negotiated for employers in different economic circumstances.

There is another problem with considering average wage settlements for the year 2007 as a basis for increases in 2008, 2009 and 2010. The settlements reached for contract increases in 2007 were based on expectations of economic conditions in 2007 viewed from some time prior to 2007. The view of the economics for 2008, viewed from today do not present as positive a picture.

It would not be appropriate for the Corrections Unit to receive a greater general wage increase than that received by the Police Patrol Unit. While the OPBA may Complain that it has been deprived of its bargaining power by locking it into the pattern

accepted by the other units, the Corrections Unit appears to be the “tail” that is wagged by the “dog”, receiving the increases negotiated by the lead units.

Based on the above, the Fact-Finder recommends that the wage increases be three percent (3%) in each contract year and that the Wage Schedule be as follows:

ARTICLE 7

SALARIES AND OTHER COMPENSATION

Section 1.

A. Annual Base Pay Employees covered by this Agreement shall receive the following hourly compensation based upon the date they began full-time employment in the Department of Corrections, which shall be known as “Base Pay”:

<u>Effective 01/01/08</u>	<u>Start</u>	<u>Six-Months</u>	<u>One Year</u>	<u>Two Years</u>
Officer in Charge	16.91	18.22	19.50	20.80
Corrections Officer	14.95	16.26	17.55	18.83
 <u>Effective 01/01/09</u>				
Officer in Charge	17.41	18.76	20.08	21.42
Corrections Officer	15.39	16.74	18.07	19.39
 <u>Effective 01/01/10</u>				
Officer in Charge	17.93	19.32	20.68	22.06
Corrections Officer	15.85	17.24	18.61	19.97

THE LANGUAGE BONUS ISSUE

Position of the OPBA

The OPBA proposed that the existing bonus of one hundred dollars (\$ 100.00) per year for employees who have the ability to speak Spanish be increased to four hundred dollars (\$ 400.00) per year and that the bonus be payable to employees speaking any language.

Position of the City

The City proposed no change in current contract language. The City contended that employees having the ability to speak Spanish or any other language is of no value to the City, contending that translation services are otherwise available.

Discussion of the Language Bonus Issue

The evidence in this case demonstrates that there are no current employees who are capable of speaking any foreign language. In light of that fact, the Fact-Finder recommends no change in the contract language.

THE CERTIFICATION BONUS ISSUE

Position of the OPBA

The OPBA proposed an annual premium for training officers and for all employees having a certification in BAC, CPR/First Aid and/or self-defense:

Section 8. Each employee certified in BAC, CPR/First Aid, CPR/First Aid, A.E.D., and or self-defense and all certified instructors shall receive an annual premium of \$600 to be paid on or before December 1 each year.

The OPBA argues that the proposal is justified by Departmental Parity since the Patrol Officers received a bonus over and above the general wage increases in the prior contract.

Position of the City

The City contends that no additional premium should be paid to employees for performing the regular duties of their job. The City acknowledged that the premium for Patrol Officers in the prior collective bargaining agreement basically applied to all members of the bargaining unit. The City contended that the additional increase paid to the Patrol Officers brought them to the mid-range of compensation for Patrol Officers while employees in the Corrections Unit were already the highest paid for their classifications in the State and would continue to be the highest compensated.

Discussion of the Certification Issue

There are two (2) compensation patterns to be considered in this case; the “Perceived” Compensation Pattern and the “Real” Compensation Pattern. The “Perceived” Compensation Pattern is shown by the general wage increases shown in the collective bargaining agreements and reported in the statistics of SERB. The “Real” Compensation Pattern is that shown by the total cost of the compensation package. Both patterns are important to consider.

The “Perceived” Compensation Pattern is established by the general wage increases set forth in the various collective bargaining agreements within an employer. The “Perceived” Compensation Pattern in this case is 3%, 3%, 3% as set forth in the

collective bargaining agreements between the City and the Firefighters and City and the Police Patrol Officers. The "Real" Compensation Pattern of the Police Patrol Unit for the 2005-2007 Agreement, roughly based on a \$ 56,000.00 annual salary of a Patrolman First Grade, however, differed from the perceived compensation pattern of general wage increases given to the other bargaining units. The real compensation pattern was approximately 3.27%, 3.36%, 3.48% when considering the addition of the Patrol Officer Specialist Premium increases of \$ 150.00, \$ 200.00 and \$ 250.00.

The OPBA has proposed, for the purpose of Departmental Parity, an immediate, rather than phased-in increase of six hundred dollars (\$ 600.00), or roughly a 1.33% increase based on an average annual salary of \$ 40,000.00. Obviously, such an increase would be dramatically out of proportion with both the real and perceived wage pattern.

It appears that within the City of Bedford Heights, the Corrections Unit lags a contract behind in obtaining various premiums. Therefore, any considered bonus would have to be phased in, just as the Police Patrol Bonus was phased in. Any considered bonus, further should be proportional to both the relative wages of the classifications and proportional to the number and complexity of the duties in common for which the premium is paid. Finally, one must consider the argument of the City that employees should not receive additional compensation simply for performing the normal duties of their job.

The average annual salary of persons within the Patrol Unit was approximately \$ 56,000.00 in the first year of the prior collective bargaining agreement, while the average annual salary of persons within the Corrections Unit is approximately \$ 40,000.00 or 75% of the Patrol Officer annual salary. In addition, the duties for which

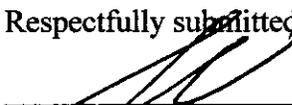
the premium would be paid differ between the contracts, patrol officers having other skills not required of Corrections employees, such as accident reconstruction, investigative training and computer leads training. Arguably, that would require a further reduction in the proportion of the premium. A counter-argument would be that either set of employees could qualify for the premium by simply being BAC certified.

Taking into account the argument that employees should not receive additional payment simply for doing their job and the precept that employees should receive additional compensation where they perform duties more complex and/or more supervisory in nature than their counterparts, the Fact-Finder recommends that there be a phased in premium for persons within the unit who are Certified Instructors. It is therefore recommended that there be a Certification Premium applicable only to Certified Instructors as follows:

ARTICLE 7, Salaries

Section 7. Each Certified Instructor shall receive an annual premium of \$ 100.00 to be paid on or before December 1 each year. Said premium shall be increased to \$ 200.00 for contract year 2009 and to \$ 300.00 for contract year 2010.

Respectfully submitted,



GREGORY J. LAVELLE, ESQ.
Ohio Bar No. 0028880
27346 Edgepark Boulevard
North Olmsted, Ohio 44070
Telephone (440) 724-4538
Facsimile (440) 979-9113
Email lavellearb@aim.com

S E R V I C E

A copy of the within Recommendation of the Fact-Finder was sent to the City of Bedford Heights, c/o Ken Schuman, 5306 Transportation Boulevard, Garfield Heights, Ohio 44125 and to the Ohio Patrolmen's Benevolent Association, c/o Kevin Powers, 10147 Royalton Road, Suite J, P.O. Box 33803, North Royalton, Ohio 44133 by overnight express mail and to the respective parties via email his 29th day of February, 2008.



GREGORY J. LAVELLE