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ALAN M. WOLK
IMPARTIAL FACT FINDER
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2008 FEB 13 P 12: 28

IN THE MATTER BETWEEN:

CITY OF MEDINA)	
)	
Employer)	REPORT and RECOMENDATIONS
)	
and)	
)	
THE OHIO PATROLMEN'S)	SERB CASE NO. 07-MED-08-0779
BENEVOLENT ASSOCIATION)	Patrol Officers
)	
Union)	

Appearances:

FOR THE EMPLOYER:

Jon M. Dileno, Esq. of Zashin & Rich

FOR THE UNION:

Mark J. Volcheck, Esq.

History of the Proceedings

Pursuant to Ohio Revised Code Chapter 4117, Section 4117.14(C), and by letter issued by SERB, the undersigned was selected by the parties through the State Employment Relations Board of Ohio [SERB] to serve as impartial neutral fact-finder to hear and decide issues presented pursuant to Ohio law.

Except to the extent that parties mutually agree otherwise, or wish to pursue mediation first, in compliance with Ohio Administrative Regulations, particularly 4117-9-05, position statements and other required documentation were timely submitted to the opposing parties and to the Fact-Finder prior to the hearing.

Hearings commenced at 9:30 a.m. at MEDINA City Hall on Thursday, December 27, 2007. A court reporter was not present.

Submission

I. PARTIES

The Union is the OHIO PATROLMEN'S BENEVOLENT ASSOCIATION.

The Union's principal representative: MARK VOLCHEK, ESQ. 10147 Royalton Road, Suite J, P.O. BOX 338003, North Royalton, Ohio 44133. PHONE: 440-237-7900; FAX: 440-237-6446

The Employer is the City of Medina, Ohio, which is located in Medina County, Ohio approximately 7.5 square miles, with approximately 28,000 residents. The City's administrative offices are located at 132 N. Elmwood, Medina, Ohio Phone: 330-725-8861.

The CITY OF MEDINA is located in Medina County in northern Ohio abutting Cuyahoga Summit and, Wayne Counties and near neighboring communities e.g. Brunswick, Wadsworth, North Royalton, Fairlawn, and several townships.

The Employer's principal representative: JON M. DILENO, ESQ. OF ZASHIN & RICH 55 Public Square 4th Floor, Cleveland, Ohio 44114, Phone: 216-696-4441 FAX 216-696-1618.

II. Description of the Bargaining Unit

The bargaining unit consists of approximately 28 Full-Time Patrol Officers

The Union is the exclusive representative of the full and part-time Patrol Officers bargaining unit. The employees are responsible safety functions in the City of Medina, Ohio.

III. Current Collective Bargaining Agreement

The current Collective Bargaining Agreements for the full-and part-time Patrolmen and Dispatcher bargaining units expired October 31, 2007.

V. Current negotiation history

Negotiations for the parties' contract commenced in October, 2007, and the parties met at least a total of five (5) times prior to the hearing. The parties have reached a tentative agreement on some issues and each mutually agreed to withdraw other proposals.

Stipulations

The parties agreed that the Recommendations herein have agreed that the successor agreement shall be for the term November 1, 2007 – October 31, 2010.

The parties waived statutory restrictions on the conciliator to award compensation retroactively.

The parties extended the time to issue the Fact Finder's Report by February 28, 2008.

Criteria

The following statutory criteria served as guidelines.

The FACT-FINDER, in making Recommendations, shall take into consideration all reliable information relevant to the issues, including, but not limited to:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of unresolved 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, 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties; and
- (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 agree upon dispute settlement procedures in the public service, or in private employment.

Preliminary comment:

In SERB negotiation disputes such as this, a fact finder must attempt to learn and consider the amount of total cost to the employer committed within ALL of its proposals compared to the total dollars that approval of the Union's demands would cost. While each party may wish or deem it necessary to allocate such funds differently, how these figures compare to the total funds anticipated to be available, and the treatment of other salaried and hourly employees may be considered. Contract benefits or deletions sought are better obtained through the give and take of good-faith negotiations, rather than relying on gaining an ally through a neutral.

Geographical comparables to Medina in Ohio referred to are located in Brunswick, Wadsworth, Fairlawn, North Royalton and Strongsville [U-10].

Proceedings

In timely filed pre-hearing statements and at the hearing, each proponent presented its position and offered its explanation and arguments regarding the disputed proposals. Each party was permitted to present witnesses. Exhibits were admitted including: Remaining issues follow. :

ISSUES

ARTICLE 25. GROUP HOSPITALIZATION

Section 1. A. The City shall pay ninety-five percent (95) of the premium cost. The bargaining unit member shall pay five (5%) percent of the premium cost through payroll deduction

City proposal:

(1) Increase employee's premium contributions from 5% to 10%,

(2) Modify:

Section 2 of Article 25 to permit the City to change insurance carriers, while providing *substantially similar* or better benefits and coverages, and to negotiate in good faith with the Union prior to implementing any change in benefit levels.

City rationale

It is noted that family coverage premium contributions for families averaged 8.6% statewide in 2006 [City Tab 7, page 24] and that in their negotiated settlement the Teamsters agreed to 10%, *if all employees pay 10%*. [So-called: "me-too" clause]. Salaried employees are to begin the same 10% co-pays on 8/1/08. The statewide average is 8.6% [City Tab F]. It is suggested that the fact finder not rely on comparables as much as the actual costs to the City. Furthermore, the City believes that a higher share will deter excessive use of medical services. [See also: City Tab 7, page 9].

The City seeks flexibility to modify its insurance plans rather than remain locked into any carrier..

Union proposals:

(1) Add to Article 25, Section 1. A., as highlighted:

The City shall pay ninety-five percent (95) of the premium cost. The bargaining unit member shall pay five percent (5%) of the premium cost through payroll *deduction to a maximum of \$65.00 per month for family coverage or \$30.00 per month for single coverage. Amounts exceeding such maximums shall be paid by the City in addition to the ninety-five percent (95%) of premium costs stated above.*

(2) The Union proposes to incorporate the actual summary of benefits provided by the insurance provided for the purposes of clarification.

Union rationale?

Comparables considered do not support raising contributions to 10%. The Union's proposed caps are reasonable and supported by comparables. The City's premium costs decreased between 2005 and 2007 with another 4% reduction for 2008 and 2009. Current contributions exceed health care contributions for police in Brunswick and Wadsworth both of which are in Medina County. Furthermore, the Union points out that the City's health rates have been going down [UX-1, page 1] because they were too high, and will not be increased over the next several years [UX-1, page 2 (rates guaranteed for 2008 and 2009).

It is argued that Medina employees now pay the same as Brunswick employee, but the City of Brunswick pays higher premiums, therefore the employees' percentage in Brunswick is smaller. In addition, the Medina prescription plan is more costly than those of Wadsworth and Brunswick [UX-2; UX-3].

Doubling the contribution from five percent (5%) to ten percent (10%) is not supported by comparables. The City's position lacks merit. Nor should the fact finder rely too heavily on the Teamsters agreement to contribute 10% as that agreement is conditional. The Teamsters Agreement also provides, in part, for maximum contributions and different language if the City changes insurance carriers [U-6]. It is noted that City Tab 7, page 9 is based on 2006 figures and less applicable to 2008].

The City proposal to allow changes in the underlying health plan on condition that the plan remains "substantially similar" to the existing plan creates ambiguity and would cause confusion and permit the City to unilaterally seek changes which may be to the employees' detriment.

If there are new rates and/or a new carrier, the Union seeks to negotiate any determination as part of collective bargaining.

Comments:

Historically, employees contributed nothing and then contributed solely to recognize a mutual interest. Contributions are not designed to serve as a kind of "user tax" upon those who benefit from a product or service. It is to an employer's benefit that employees who are injured or sick be free to obtain any and all necessary treatment without worry about burdensome costs. The employee is secure and the employer gains much better attendance and service from the employee. Such a system, however, should never be abused.

It is obvious that employees should be constantly aware that unnecessary medical expenses may increase the insurers risk and thereby cause a rate increases. At the same time, the employer must be continually diligent in negotiating the most mutually beneficial coverage for the most favorable rates.

It is impossible to predict whether rates will rise or fall. In an uncertain economy, inflation may cause premiums to rise, or recession/depression may lower premiums. These visceral forces always tug one another.

FINDING AND RECOMMENDATIONS

FINDING regarding increasing employee contributions:

Although the City cites statewide averages approaching 8.6% contributions, it is noteworthy that this percentage includes 15% and 15.1% for State of Ohio employees. Counties and colleges also receive contributions between 9.3% and 12.3%. The evidence did not note the statistical distortion caused if the employees are not otherwise truly "comparable." Accordingly somewhat less weight is given to so-called statewide percentages.

In this case, after taking into account the comparables presented as well as the current flattening costs actually being paid out by the employer, a contribution increase from 5% to 10% is not justified by either *statewide* averages or by *me-too* expectations. There is concern that after 12/31/09, circumstances may change, therefore the Union request for a maximum or cap is not justified at this time.

However, in my view the evidence of uncertain future costs and City exhibits Tab 6 and Tab 7, page 24] does support an appropriate increase.

RECOMMENDATION:

Employee contributions should be increased from five percent (5%) to six and one half percent (6 ½ %).

FINDING with respect to any possible change in carrier:

There is legitimate concern that the phrase *substantially similar* is ambiguous. This management request changes the prior phrasing *comparable to or better than* which is also contained within the current Teamsters Agreement [U-6]. I find that, without mutual participation in adopting any such change, the proposed new language is ambiguous. It is not likely to improve clarity and may lower some benefits currently provided and/or change the mechanics of processing medical and prescription claims.

RECOMMENDATION:

Retain the existing language in Article 25, Section 2, regarding a management option to change carriers.

RECOMMENDATION:

Consider modifying Article 25, Section 4 to provide a labor-management insurance committee to assist in evaluating the complexities of health insurance costs and benefits to accomplish a mutually and economically beneficial resolution.

ARTICLE 26. WAGES

City proposal for increases:

Article 26

Section 1: 1st year 1 % amended at the hearing to 3% (effective 11/1/07)

Section 2: 2nd year - 1.5% amended at the hearing to 2% (effective 11/1/07)

Section 3: 3rd year - 2 % unchanged at the hearing 2% (effective 11/1/07)

City rationale

Medina no longer has expanding population and housing. The result is a flattening of income tax revenues. The income tax revenue increase from 2006 to 2007 was 0.33%. In support of Medina's position, the comparable compensation in neighboring communities and the statewide average increase has been at least 3%.

It is argued that the CPI is not relevant because the same increases also impact the City for costs of transportation and fuel energy as well as medical costs. Furthermore, the Teamsters contract was negotiated several years ago, before the current receding economy

Medina is not claiming an inability to pay but notes that currently there a credit crunch as reflected in substantially fewer building permits and income tax growth reduced to .33%. [Tab 4, pages 1 and 2]. There remains a need to be fiscally responsible. Medina citizens passed an income tax increase.

Union proposal for increases:

Article 26

Section 1: 1st year – 4.5% amended at the hearing to 3.75% (effective 11/1/078)

Section 2: 2nd year – 4.5% amended at the hearing to 3.5% (effective 11/1/07)

Section 3: 3rd year – 4.5% amended at the hearing to 3.5% (effective 11/1/07)

Renumber Section 3 to *Section 4*

Union rationale

The City initially offered 1%-1.5% and 2% but raised its offer in its pre-hearing statement. The Union lowered its demand from 4.5% at the hearing. Thus the parties position on wages has narrowed. The proposed increases are supported by comparables as well as the City's financial position, cost of living increases, customary police increases and other customary statistics.

According to the U.S. Labor Department the CPI-U rose (mostly for food and fuel) at a seasonally adjusted annual rate of 4.2% during the first eleven months of 2007 [U-7]. The Union demand is less than this figure. City Tab 2 reflects Police settlements statewide averaged increases of 3.23%. The Teamsters current contract granted raises of 3.5 each year. i. e 2006, 2007 and 2008 [U-8] police received increases for 2008 and 2009 [U-9- Wadsworth 3.35% and 3%]; [U-11 North Royalton 4%-3% and Strongsville 3.5% -3.25%]. Review financial statements for 2005 [U-12] and 2006 [U-13] which are GAAP, not CASH e.g. includes receivables..

FINDING AND RECOMMENDATIONS

FINDING:

Arriving at an appropriate wage and benefit calculation can be quite complex. Each party presented the perspective in order to achieve its best result. The City must be fiscally responsible. The members of the bargaining unit are pressed by ever-increasing living costs.

City Tab 1 and Tab 3 and comparables have been considered. Both parties raise concerns as to whether the cited comparables are truly applicable. Tab 1, page 2, captioned: *Top Level Plus Extras* (identifying wages, pension pick-up, longevity and uniform allowance), and Tab 3 reflecting wage increases throughout Medina County have been considered. The additional health care premium contributions recommended above are also a factor.

The following recommendation is based on the statewide average increases of 3% and the claimed comparables most of which somewhat exceed 3% [City Tab 3].

RECOMMENDATION:

Increase wages three and one quarter percent (3.25%) from and after 11/1/07 to 10/31/08; three percent (3%) from 11/1/08 to 10/31/09; and three percent (3%) from 11/1/09 thru 10/31/10.

ARTICLE 28. SHIFT DIFFERENTIAL

Section 1 There is hereby granted thirty-five cents (35c) hourly pay differential for employees assigned to working second or third shift.

Union proposal:

The previous negotiation on this provision was in 1998 therefore a raise is indicated. Week-ends worked affects family life and planning, and sleep patterns. Therefore an increase from 35 cents/hour to 50 cents /hour is warranted.

Union rationale:

The Union position is based on comparables and bargaining history.

City position:

Maintain current contract. All police undertake the position as a 24-7 obligation. [See City Tab 9]. Only the City of Brunswick also pays a shift differential of \$0.38/hour. No other neighboring communities pay a shift differential for an inherently 24-7 job.

FINDING AND RECOMMENDATION

FINDING:

The Union proposal to raise shift differential pay is not supported by sufficient evidence or other reasoning at this time. [See City Tab 9]

RECOMMENDATION:

Reject the Union proposal and continue the shift differential premium of thirty-five cents (\$0.35) hourly at this time.

ARTICLE 29. LIFE INSURANCE

Section 1 The City agrees to provide (either through self-insurance or a policy of insurance) a Twenty-Five Thousand Dollar (\$25,000.00) life insurance/accidental death or dismemberment ("life insurance") benefit to member(s) of the bargaining unit.

Union proposal:

Insert \$50,000.00 in place of \$25,000.00.

Union rationale

The Union position is based on comparables and bargaining history.

City position:

Maintain current contract.

City rationale

It is not for the Union to drive the plan design, nor has the City modified its plan for – non- union employees.

FINDING AND RECOMMENDATION

FINDING:

\$25,000 is nominal in today's economy and the increased cost may be modest, however I there was insufficient evidence of the total cost for this police unit or other reasoning, and there is a risk to the City that increased death benefits become a "me-too" issue.

RECOMMENDATION:

Reject the Union proposal to increase life insurance benefits at this time.

ADDENDUM: INJURY LEAVE/WAGE CONTINUATION

This provision is currently an addendum.

In pertinent part, patrol officers remain entitled to workers' compensation resulting from workplace injuries however, the existing bargaining agreement provides for full pay and benefits for up to 90 days with a possible extension up to 180 days. Under these circumstances the injured employee assigns the benefits he would otherwise receive from Workers Compensation over to the City. The determination of eligibility for benefits remains with the Ohio Bureau of Workers Compensation.

City proposal [City Tab 8]:

(1) Limit eligibility for injury leave only for injuries related to hazardous duty-related injuries (occurring in the course of employment) ---

Clarify that employees are not entitled to additional injury leave for "recurring injuries."

City rationale:

(1) Why is it necessary to replace Worker Compensation coverage?
Many surrounding communities do not provide this benefit at all.

The City seeks to contractually limit this benefit to hazardous duty-related injuries, which is presumed was intended in the Agreement. Furthermore, the City seeks to avoid claims for recurring injuries far exceeding the 90 and/or the 180 day periods.

Union position:

(1) Maintain current addendum language

Union rationale:

The police Dispatchers incorporate the same addendum in their agreement by reference.

The City provided no support for this proposed change.

Union proposal:

Incorporate the current addendum as Article 33 in the agreement, and change the Duration Article to Article 34.

City position

No objection

FINDING AND RECOMMENDATION

FINDING:

Although the City may perceive potential abuses, there was insufficient evidence or other reasoning to support the City position to limit the extent of Workers Compensation determinations, which would create inconsistent redundancy. The City determinations could differ from the Workers' Compensation determinations.

RECOMMENDATION

- (1) Reject the City proposal to modify the Addendum (now Article 33) at this time.
- (2) There being no objection, the current addendum will be inserted as Article 33 in the agreement, and the Duration Article will be renumbered: Article 34.

ARTICLE 31. RETENTION OF BENEFITS

Section 1 All benefits which are presently enjoyed by all City employees are a part of working conditions and shall continue throughout the life of this Agreement.

City proposal:

Delete this provision.

City rationale:

The current language can potentially render management rights meaningless. Furthermore, except for Brunswick which limits retention to enumerated benefits, all other surrounding police departments have no such provision [City Tab 11]. The City wants to define "benefits" and "working conditions."

Union position:

Opposes

Union rationale:

There is no cause to remove this long-standing article and no cause for removal has been demonstrated or explained.

FINDING AND RECOMMENDATION

FINDING:

There is insufficient evidence or other reasoning to support this proposal and delete this provision at this time.

RECOMMENDATION:

Reject the City proposal to delete continuing benefits at this time.

NEW ARTICLE DETECTIVE ON-CALL PAY

Background: Each week, one of the City's four detectives, all of whom are regularly assigned to day shifts Monday thru Friday are assigned to be on-call, so as to respond, within a reasonable time, to the scene of a serious crime. In Medina only Detectives sign-off on serious crime.

Union proposal:

The Union proposes the addition of a new article as follows:

DETECTIVE ON-CALL PAY Each Detective required to be on call shall receive two-hundred twenty-five dollars (\$225.00) per calendar week for each week he or she is on-call.

Union proposal and rationale

This proposal for the extra responsibility and extra burden is supported by comparables. [See U-15 showing Wadsworth and North Royalton each provide compensation for being on stand-by.]. It is noted that the City did not express opposition to detective call-in pay during negotiations except as to amount. Therefore the Union seeks to provide detectives with 122-hour per week premium for being "on-call."

City position:

Maintain current contract

City rationale:

This proposal would cost the City \$20,000 annually. This is a minor inconvenience for those who do not normally work second or third shift, nor on week-ends. No other Medina officers receive on-call pay. Detectives understand call-in service is without additional compensation. It is claimed that stand-by provision in the Wadsworth Agreement "is utilized by fire and paramedic services, and not police (detectives)." [Tab 10].

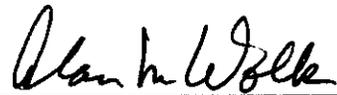
FINDING AND RECOMMENDATION

FINDING:

There is insufficient evidence or other reasoning to support this proposal for additional incentives for detectives at this time. In my view "stand-by" time provided in "comparable" agreements differs from being one of four (4) detectives being "on-call" alternating over a 52 week period.

RECOMMENDATION:

Reject the Union proposal for on-call pay for detectives at this time.



ALAN M. WOLK, Fact-Finder

Made effective in Medina County, Ohio,
this 11th day of February, 2008

EXHIBITS

- JX-1 Collective Bargaining Agreement through 10/31/07
- JX-2 Current Prescription Drug Program via Medical Mutual

- U-1 Medina health premiums 2005-2009
- U-2 2007 -- Health Care -- multiple jurisdictions Brunswick, Medina
- U-3 City of Wadsworth Health Care
- U-4 2007 -- Health Care -- North Royalton, Fairlawn, Medina
- U-5 Comparable Health benefits
 - Strongsville, North Royalton, Strongsville
- U-6 Teamsters CBA Insurance benefits
- U-7 US Dept of Labor News 2007 statistics
- U-8 OPBA v Teamsters wage comparison
- U-9 2007 Comparison ten year employees
 - Brunswick, Wadsworth, Medina
- U-10 Map-Quest of area around Medina, Ohio
- U-11 2007 Comparison ten year employees
 - Brunswick, Wadsworth, Medina, Fairlawn, North Royalton, Strongsville
- U-12 City of Medina Financial Statements 12/31/05
- U-13 City of Medina Financial Statements 12/31/06
- U-14 Injury Leave Survey
 - Brunswick, Wadsworth, Fairlawn, North Royalton, Strongsville
- U-15 On-Call Pay
 - Wadsworth, North Royalton

- E- 1-11 [-Booklet]
- E-12 Brunswick excerpts