
In the Matter of Interest Arbitration

2009 MAR 23 P 2: 36

Between

Before: Harry Graham

Fraternal Order of Police,
Lodge 15

SERB Case No. 2007-MED-09-0951

and

The City of Brook Park, OH.

APPEARANCES: For FOP Lodge 15:

Robert Phillips
Faulkner, Muskovitz & Phillips
820 West Superior Ave., 9th Floor
Cleveland, OH 44113

For the City of Brook Park:

Gary Johnson
Johnson, Miller & Schmitz
635 West Lakeside Ave., #600
Cleveland, OH 44113

INTRODUCTION: On January 16, 2009 the parties and this neutral met to discuss resolution of their dispute. That meeting was fruitless. The parties agreed to waive a formal Factfinding hearing and proceed directly to interest arbitration in the interests of economy of time and funds. They also agreed to modify the issue-by-issue format of Conciliation (interest arbitration) established by Chapter 4117 of the Ohio Revised Code. They permitted discretion for the Arbitrator to deviate from the final offer of the Union or the Employer. Finally, they agreed to waive the taking of a verbatim transcript.

A hearing in this matter was held in Brook Park on February 27, 2009. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record was closed at the conclusion of oral argument on February 27, 2009.

BACKGROUND: Many years of history in Brook Park bear upon this dispute. The Police feel that they have not been as well treated by the City as their counterparts in the Fire Department. A goal of the FOP in this round of negotiations was to bridge, or at least, close, the perceived disparity with the Fire Fighters.

As negotiations unfolded the Fire Fighters proceeded before the Police. The City told the Police to be patient and that when the time came, they would be "taken care of." The Union understood that to mean that they would secure an Agreement superior to that secured by the Fire Fighters.

In due course the Fire Fighters were unable to reach agreement with the City. Their dispute proceeded to Factfinding before Factfinder Nels Nelson. His report was rejected by the Union. Prior to reaching interest arbitration the parties reached an agreement for 2008 and 2009. Two three percent (3.0%) wage increases were made. Changes occurred in health insurance. The City offered to apply the wage and health insurance provisions of that agreement to the Police. That offer was accepted. It did not serve to conclude negotiations as the FOP sought additional recompense to close the gap with the Fire Fighters.

Significant to this dispute is the economic environment of late winter, 2009. It has worsened greatly since the Fire Fighters reached agreement with the

City. In February, 2009 the national unemployment rate was 8.1%. In January, 2009 the Ohio rate was 8.8%. (Bureau of Labor Statistics). In the fourth quarter of 2009 Gross Domestic Product contracted at a rate of over 6.0%. (Dept. of Commerce). "Rescues" of failing financial institutions such as Citigroup, AIG and Bank of America have become commonplace. The major stock market indices have fallen to levels last seen more than a decade ago. Federal assistance has been extended to such former industrial icons as General Motors and Chrysler. That assistance has been deemed necessary as the rate of auto sales in the United States has fallen below 10 million on an annualized basis, a rate that would have appeared inconceivable some few months ago. That figure has particular significance for Brook Park as Ford has historically been a major employer and economic engine for the community. Employment at the Ford Brook Park engine complex has declined to levels that no one would have believed could occur. It was 4500 in 1999 and 1651 in 2008. (Er. Ex. 18). Part of the Brook Part complex has been permanently closed. Part has been shuttered with the hope of reopening. In fact, that part, known as Cleveland Engine Plant No. 1 will restart in the Spring of 2009, projected to employ 250 people, down from 577 when it was shuttered. (Cleveland Plain Dealer, Feb. 27, 2009).

The difficult employment situation extends to the public sector in northeast Ohio. On March 8, 2009 the Cleveland Plain Dealer reported that "At least nine northeast Ohio cities – from Elyria to Mentor – have resorted to layoffs, even in safety forces, purging more than 95 people in the last six months." Further, "In

Ohio, about 200 of the 9,000 law enforcement employees represented by the Fraternal Order of Police have been let go so far this year.” (p. B 1).

The largest source of income for Brook Park is the municipal income tax. The serious economic circumstances facing the nation and the City have manifested themselves in income tax collections. In 1999 the City received \$18.08 million from the income tax. In 2008 collections were \$18.11 million. Stagnation. The City expects to collect \$17.30 million in 2009. As income tax receipts constitute 60% of City revenues that development obviously has adverse consequences for the City. Funds provided to the City General Revenue Fund by the income tax have declined from \$16.9 million in 2006 to \$13.5 million in 2008. The General Fund has been bolstered by approximately \$3.0 million of transfers from the admissions tax fund and other City funds. Those transfers are one-time events that cannot be repeated. That must be considered when examining the fiscal condition of the City. To put it bluntly, that condition is poor. Over time the City has resorted to transfers into the General Fund from other City funds to finance its operations. This has resulted in a situation where the year ending balance in the General Fund has declined in this decade. (Er. Ex 18, p. 12). It is expected to be negative in 2009. At arbitration officials of the Finance Department (who are expected to be Cassandra's) testified that the City cannot continue in the manner it has been doing business for the past several years. I agree. As will be seen the amounts sought by the Union in this proceeding are modest. Standing alone they will not break the City. They can be afforded in a bookkeeping sense. Whether they should be paid is another question.

It is the case that this proceeding is being conducted under a Mutually Agreed Upon Dispute procedure. (MAD). That notwithstanding, attention has been given to the criteria to be examined by neutrals set forth in the Ohio Administrative Code, Section 4117-9-05(k). These are:

1. Past collectively bargained 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 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. The stipulations of the parties
6. 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 Union has four issues in this proceeding. They are:

1. Vacation
2. Holidays
3. Clothing allowance
4. Proficiency pay

The Employer has a list including some different issues. These are:

5. Overtime
6. Sick leave
7. Compensation
8. Insurance
9. Contract language, obligation to negotiate and total agreement.

ISSUE 1, VACATION

POSITION OF THE UNION: The Union points out that available vacation in Brook Park compares unfavorably to nearby communities. It proposes that

officers in Brook Park be compared to a group of communities in the west side of the Cleveland metropolitan area. These are: Strongsville, Berea, North Royalton, North Olmsted, Fairview Park, Middleburg Heights, Brooklyn, Parma, Parma Heights and Lakewood. All provide a sixth week of vacation to officers. Brook Park does not. Thus, the Union proposes that there be added a sixth week of vacation to the existing vacation schedule. In lieu of that week, the Union proposes there be added an additional day of vacation starting at 19 years of service. Thus, an officer with 19 years of service would be eligible to receive 5 weeks plus one day of vacation; the 20 year officer would secure 5 weeks and two days of vacation. This accrual rate would end with an officer getting six weeks of vacation in the 23rd year of service.

POSITION OF THE EMPLOYER: The City is opposed to the proposal of the Union regarding vacation. There is variability in the amount of vacation that may be accrued in the western suburbs of Cleveland. With the exception of the lack of a sixth week, Brook Park officers are not substandard. Further, there is in existence in Ohio something known as the DROP program. In essence, it permits employees to retire, collect their pension and continue to work for the City. Extended to officers when times were better, it has had the effect of keeping officers of long service on active duty. Extension of additional vacation benefit to officers under these circumstances is unwarranted in the City's view.

No other City employees have the vacation benefit being sought by the Union in this proceeding. Were I to award any increase such increase would inevitably spread throughout City service. As the vacation schedule is uniform in

the City and is not substandard, no increase should be awarded the City contends.

DISCUSSION: It is the case that officers in nearby communities have a sixth week of vacation available. Were this particular issue standing in isolation an increase would be warranted on the ground of external comparability though the argument of the City concerning internal comparability carries great weight. This issue, like all others, does not stand in isolation.

It must be stressed that the economy of the nation, the state and the region is in very, very difficult circumstances. Unemployment is high and rising. The financial markets are in tumult, with the stock market falling to lows not seen in a decade. Similarly, as pointed out above, the fiscal situation of the City is deteriorating. It is not good and promises to worsen. That internal comparability supports the position of the City is a strong point in its favor. It must be recognized that these are very, very difficult economic times. Two three percent (3.0%) wage increases have been agreed upon. The health insurance plan provided to City employees is excellent. Under these circumstances no increase in vacation is appropriate. The position of the City is awarded.

ISSUE TWO, HOLIDAYS

POSITION OF THE UNION: The Union proposes that there be an increase in holiday time for officers. It proposes an additional 8 hours, to be in the form of an additional holiday or personal day. Looking at the communities urged as comparable only Fairview Park provides the 12 days holiday/personal days

granted in Brook Park. All others provide more. Strongsville provides 18.25 days off. External comparability supports the proposal of the Union.

Within City service the Fire Fighters have more time off than do the Police. They have 144 hours, compared to the 96 for which the Police are eligible. It is also the case that the Fire Fighters can cash in all unused time off while Police officers can cash in a maximum of 40 hours. This is manifestly unfair and should be increased according to the Union. It proposes that Police officers be permitted to cash in 48 hours per year.

POSITION OF THE EMPLOYER: The City opposes the Union proposal. It points out that with the exception of Fire Fighters, all other City employees have the same cash in provisions as the Police. No change is warranted in its view.

DISCUSSION: This issue presents the classic dilemma for the neutral. On the one hand, external comparability supports the position of the Union. On the other hand, the internal data, with the exception of the Fire Fighters, supports the position of the Employer. The proposal of the Union obviously has cost implications. Given the fiscal position of the City I am loath to award it. In the situation facing the City an expansion of the holiday/personal day time off as proposed by the Union is insupportable. The proposal of the Union is not awarded.

ISSUE THREE, CLOTHING ALLOWANCE

POSITION OF THE UNION: The current clothing allowance is \$1000 per year. It is paid in a combination of a voucher and cash. All other considerations being equal, the Union is satisfied with that amount. However, the Union contends all

other things are not equal. As pointed out above, the Union views that it lags behind Brook Park Fire Fighters. As that is the case, an increase in the clothing allowance is warranted. It proposes the allowance be raised to \$1100, payable in cash. During the long course of negotiations the parties had agreed on \$1100 in April, 2008. That amount should be awarded the Union urges.

POSITION OF THE EMPLOYER: No increase in the clothing allowance is justified according to the City. It proposes no change be made.

DISCUSSION: The parties had agreed upon \$1100 during negotiations. It is the case that City finances have deteriorated since that deal was reached. However, that amount is modest. The clothing allowance should be increased to \$1100 for 2009. It should be payable in cash.

ISSUE FOUR, PROFICIENCY PAY

POSITION OF THE UNION: There is currently no proficiency pay in the Agreement. The Union proposes that there be instituted such a benefit retroactive to 2008. The amounts proposed by the Union are \$1500 for 2008 and \$1750 for 2009. Several westside communities provide this benefit. e.g. Berea, Broadview Heights and Lakewood. The amounts are variable.

More significantly, internal comparisons strongly support its proposal on this issue in the opinion of the Union. It is the case that Brook Park Fire Fighters are more highly compensated than the Police. At 10 years of service the yearly difference approximates \$1500. At 20 years the adverse comparison is about \$1900. (Un. Ex. C). A disparity of this magnitude must be addressed the Union contends.

The Ohio Revised Code, Sections 109.801 and 803 mandates that officers secure and maintain firearms proficiency. In view of this requirement, plus the fact that Brook Park officers lag behind their counterparts in the Fire service, the Union urges its proposal be adopted in its entirety.

POSITION OF THE EMPLOYER: The City points out that while some communities near to Brook Park have proficiency pay, others do not. There is a mixed picture in the area. There is no pattern of such pay that would warrant its being made of Brook Park officers in the opinion of the City.

In fact, proficiency pay was formerly made in Brook Park. In the 2002-2004 Agreement it was removed as a separate item and rolled into the base rate. Now, the Union is seeking its restoration. Such a proposal is inappropriate in City's view.

As is its position on other issues, the City points to its poor financial position. Given that, no proficiency pay is possible in this Agreement.

DISCUSSION: The most important consideration in this proceeding is the economy of the nation and the City. It is obviously poor. The City has undertaken to pay to the police the three percent wage increase provided to the Fire Fighters and other City employees. It has agreed to a form of retroactivity (see Issue seven below). Were negotiations opening now it is doubtful the Employer would place a wage increase on the table. Given its financial condition the City is making a major effort on behalf of its employees. To require it to do more for one group is inappropriate, particularly given the tendency of benefits to spread

among all other groups employed by the Employer. The proposal of the Union on this issue is not awarded.

ISSUE 5, OVERTIME:

POSITION OF THE UNION: As is set forth below, the City is proposing to change the manner in which overtime is earned. It made the same proposals in the negotiations with the Fire Fighters. They came before Factfinder Nelson and he rejected them. That should occur in these negotiations as well the Union urges.

POSITION OF THE EMPLOYER: The City proposes that the current manner in which overtime is earned, on a daily basis, be changed to overtime on a weekly basis. It also proposes that officers who are called-in not earn overtime for work abutting their scheduled work day. Finally, the City proposes that sick leave be excluded from the overtime calculation. As the City recounts the history of negotiations, the Union has not opposed this change.

There are some Agreements on the westside that have these provisions. They represent a cost saving to the City. Given its financial condition, such savings are necessary. Thus, the City contends its proposals should be awarded.

DISCUSSION: It is the case that overtime was thoroughly and extensively discussed by Factfinder Nelson. He rejected the proposals of the City. I do as well. The current manner of calculating overtime is of longstanding in City service. It was not changed in the Agreement covering the Fire Fighters. As that is the case, it cannot be changed in the Agreement covering the Police.

If the parties have agreed on sick leave exclusion in the overtime calculation they can indicate as much in their Agreement. Absent such an agreement, the proposal of the City is rejected in its entirety.

ISSUE 6, SICK LEAVE

POSITION OF THE UNION: The City has a range of proposals on this issue. The Union has expressed some willingness to accede to those proposals in the context of the Agreement. It is strenuously opposed to a redefinition of the concept of "immediate family" as proposed by the City. Other bargaining units in City service have the same language as the Police and did not change it in the current round of negotiations.

POSITION OF THE EMPLOYER: The City proposes a change in the definition of "immediate family" for sick leave. It wants to include only the spouse of the employee, children and parents. This somewhat more restrictive definition will reduce the cost of sick leave utilization and thus represents a savings to the City.

Secondly, the City proposes a reduction in the buyout rate on retirement to 4/8's from 5/8's. Obviously this too will represent a cost savings to the City. As it relates the history of negotiations, the Union has been receptive to this idea.

Finally, the City proposes deletion of an extra two days of funeral leave for funerals more than 400 miles from Brook Park. This too will represent a cost savings for the Employer. Other represented groups in City service have agreed to this change and it should be extended to the Police as well the City contends.

DISCUSSION: Based upon my perception of the presentation made by the parties at the hearing it appears that the change to 4/8's sick leave buyout did not seem seriously disputed. It is awarded.

More contentious is the change in the definition of "immediate family" proposed by the City. It was not shown that other bargaining units have acceded to the proposal of the City. Nor was it shown by the Employer that any sort of abuse has occurred. Any savings that might be realized are small at best. The proposal of the City is not awarded.

The Union did not strenuously object to the proposal to modify the use sick leave for funerals occurring more than 400 from the City. It is awarded.

ISSUE SEVEN, COMPENSATION

POSITION OF THE UNION: According to the Union not to the arbitration hearing was there any issue over compensation. It has always understood that the wage issue was resolved on the basis of two, three percent (3.0%) wage increases. The first would be retroactive to January 1, 2008, the second would take effect January 1, 2009. At the hearing the Employer proposed modification in the manner the retroactive payment would be made. Set forth below, it contemplates a different mechanism for making the 2008 wage increase payment. The Union forthrightly, strenuously and adamantly objects the proposal of the City. It claims the Employer proposal is at variance with the entire course of negotiations on the wage issue and thus should be rejected.

POSITION OF THE EMPLOYER: The City proposes that in lieu of the 2008 retroactive wage payment there be made a one-time payment of \$1800.00 for

calendar 2008. New hires and officers who quit or retired prior to the date of the payment would not be eligible to receive it. Then, the wage scale would increase by six percent (6.0%) effective the first payroll period in January, 2009.

The City also proposes a change in the time period relating to step increases.

The Employer asserts this proposal treats members of this bargaining unit the same as all other City employees. It represents fulfillment of its commitment to treat Police officers in the same fashion as other City employees. Thus, the City contends its proposal should be awarded.

DISCUSSION: Throughout the history of negotiations and through the mediation session of January 16, 2009 the parties understood that the wage increase would be retroactive to January 1, 2008. The proposal of the City on this issue comes late in the game. It cannot, and is not, awarded. The 2008 wage increase should be made retroactive to January 1, 2008 and the second should be made retroactive to January 1, 2009. The City-proposed change in the existing structure of the steps to top step should occur.

ISSUE EIGHT, INSURANCE

POSITION OF THE UNION: The Union is aware of the change in health insurance being made city-wide. It accepts that change. The issue in this proceeding relates to timing. The Union proposes that the changed health insurance take effect on the date of this award. It is of the view that as negotiations and neutral involvement did not occur in timely fashion and the 2008-2009 Agreement was not reached to the date of this award its members

should not be penalized. Implementation of the new health insurance thus should occur with the issuance of this award.

POSITION OF THE EMPLOYER: All City employees have gone onto the new health insurance plan effective January 1, 2009. No exception should be made for members of this bargaining unit. That negotiations for this Agreement were prolonged cannot be laid at the feet of the City, any more so than at the feet of the Union. As all other employees went on the new health insurance effective January 1, 2008, so too should Police officers the City insists.

DISCUSSION: The City is correct on this issue. All City employees went on the new health insurance effective January 1, 2009. The wage increase was made retroactive to that date. No reason exists for members of this bargaining unit to fare differently than their colleagues in City service. The new health insurance plan should take effect January 1, 2009.

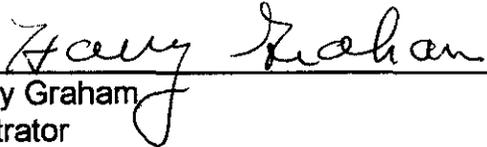
ISSUE NINE, CONTRACT LANGUAGE

POSITION OF THE UNION: As set forth below, the City is proposing to add language to the Agreement dealing with the obligation of the parties to negotiate during the life of the Contract and indicating the Agreement represents the total agreement of the parties. The Union is opposed to this proposal. No such language has ever been in the Agreement. No problem can be pointed to by the City to justify it now. Further, the same issue came before Factfinder Nelson. He rejected the proposal of the City. That should be the case in these negotiations as well the Union urges.

POSITION OF THE EMPLOYER: The City proposes two new Articles, XXX and XXXI, be added to the Agreement. These would deal with the obligation of the parties to negotiate during the term of the Agreement and the deletion of past practices. Both are commonplace in public and private sector agreements alike. No reason exists for the Police in Brook Park to be any different from their colleagues in the nation and northeast Ohio in the view of the City.

DISCUSSION: The proposal of the Employer is not awarded. As noted by the Union, this issue came before Factfinder Nelson in the negotiations involving the Fire Fighters. He did not recommend such language be included in the Agreement. Further, these parties will soon be negotiating a successor Agreement to this one. Should the City desire to raise these issues it will shortly be able to do so again. The City has not shown a problem exists that could be addressed by addition of its proposed language. As the party proposing a language change bears the burden of convincing a neutral of the necessity for change and the City has not done so, its proposal cannot, and is not, awarded.

Signed and dated this 20th day of March, 2009 at Solon, OH.



Harry Graham
Arbitrator