



STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING REPORT

IN THE MATTER OF:

Case No. 07-MED-10-1183

CITY OF WARRENSVILLE HEIGHTS
Employer,

FACT-FINDER: John Babel, Jr. Ph.D.

And

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION (Patrol Officers).
Employee Organization

2007 DEC 12 A 11:45

STATE EMPLOYMENT
RELATIONS BOARD

APPEARANCES

FOR THE UNION

S. Randell Weltman, OSBA Attorney
Jim Thompson, OPBA Director
Grey Curry, OPBA Director

FOR THE CITY

Ken Stark, Attorney
Mylayna Albright, Asst. Law Director

1. INTRODUCTION

The fact-finder was contacted under the auspices of The Ohio State Employment Relations Board to immediately render a written report. A hearing was scheduled for Friday, December 7th with the report due no later than December 12, 2007.

The Ohio Patrolmen's Benevolent Association (The Union or OPBA) represents a unit of 24 patrol officers working for Warrensville Heights (city). The city is located in southeastern Cuyahoga County with an approximate population of 15,000. It is a residential community with some commercial businesses.

2. REPRESENTATIVES

The city is represented by Kenneth B. Stark of the law firm of Littler Mendelson, P.C., 1100 Superior Avenue, 20th Floor, Cleveland, Ohio 44114.

The Union is represented by S. Randall Weltman, Esq. 10147 Royalton Rd., Suite J., North Royalton, Ohio 44133.

3. HISTORY

In 2005, the City and the Patrol Officers failed to reach agreement on a successor to the Agreement that expired on December 31, 2004. The parties submitted several issues to fact-finding. The basic issue submitted was base wage increases for 2005, 2006, and 2007. At the fact finding, the City proposed no wage increase for 2005, a 4% wage increase for 2006 and a 4% wage increase for 2007. The Union proposed increases of 3.25%, 4.25% and 4.5% for 2005, 2006, and 2007 respectively. Following the hearing, the fact finder awarded an 11% increase. The city indicated that it was prepared to accept the fact finder's report. The Union rejected it on December 5, 2005 and the matter was submitted to conciliation on January 31, 2006.

At the conciliation, the City proposed a 0%, 4% and 4% wage increase. The Union proposed 0% in 2005, 8% in 2006 and 4% in 2007 and a 4% lump sum payment for the year 2005.

The conciliation decision was issued on March 2, 2006 with the decision on the two major issues, compensation and health as follows:

The last and best offer of the Union shall be compensation for the bargaining unit members:

“Effective January 1, 2006 8%

Effective January 1, 2007 4%

No later than sixty (60) days following the issuance of the Conciliator's Decision, each bargaining unit member shall be entitled to a lump sum payment in the amount of 4% of the employee's gross wages for the year 2005. Gross wages do not include either special capacity annual premiums (Article 15, & 2) or uniform and maintenance allowances (Article 25 & 1).”

Health insurance

The language in the contract shall be as follows:

“The City shall provide single, and where appropriate, family hospitalization coverage substantially equal to the Medical Mutual of Ohio, Super Med Plan hospitalization plan in effect in the date of the execution of this Agreement. The City shall pay the full cost of such coverage during the period of this Agreement. For the year 2006, the City shall reimburse any employee to the extent he/she incurs expenses per the deductible that exceed \$1,000.00. However, the City reserves the option,

should it choose, of securing any additional coverage or benefits at any time during the period of this Agreement, but in no manner decreasing the degree of benefits as provided at the time of execution of this Agreement.”

The City filed a Common Pleas Court action to vacate the Conciliator’s decision on or around April 12, 2006. The Union responded by filing a Motion to Confirm the Conciliator’s decision.

On January 9, 2007 Judge Janet R. Burnside issued a Judgment Entry rejecting the City’s action to vacate and confirming the Conciliator’s decision.

The City appealed Judge Burnside’s decision to the 8th District Court of Appeals. The City’s appeal has been fully briefed and the parties are awaiting oral arguments.

During this legal entanglement the parties have worked pursuant to the terms of the operative agreement based upon the January 1, 2002 to December 31, 2004 contract.

This means that no changes were made including compensation except for an agreed change in health coverage in which deductibles were included with the city reimbursing union members for all deductibles incurred during the 2006 and 2007 years.

It is the Union’s position that this successor agreement as dictated by the Conciliator’s decision will expire on December 31, 2007.

The Union filed its Notice to Negotiate with SERB which triggered SERB’s dispute resolution procedure and the scheduling of this fact-finding hearing. The City maintained that parties can at this time negotiate a one year agreement and has submitted a proposal.

One can see that both parties following the SERB rules and regulations during the past 3 years and still have been unable to negotiate a contract.

4. ISSUES

The issues presented to this fact-finder are related to contract negotiations to be effective January 1, 2008.

Issue 1 – Retroactive Agreement

UNION - The Union’s position is that for each of the following nine (9) articles;
Articles 15 - Premium Pay, Article 16 – Holidays, Article 17 – Vacations, Article 18 – Sick Leave, Article 20 – Injury Leave, Article 22 – Compensation, Article 24 – Uniform Allowance, Article 26 – Miscellaneous and Article 29 – Duration of Agreement;

That it proposes to be able, at the time that the parties' 2005-2007 labor contract is executed, to make a proposals regarding each article and pursue such for the January 2008 contract proposal in accordance with SERB's statutory dispute resolution procedure.

CITY – City has no proposal

DISCUSSION

The Union is requesting that this fact-finder rule that the Union, before negotiation has started, for a contract to be effective January 1, 2008, will have the right for issues covered in the fore-mentioned nine articles be retroactive January 1, 2008.

FACT-FINDER RECOMMENDATION

Union proposal denied.

RATIONALE

It seems to this fact-finder that such a ruling would interfere with the negotiation process. If retroactive is an issue that should be resolved during 2008 negotiations.

ISSUE 2 – HEALTH INSURANCE

City – The City's position is to change Article XIV – Insurance.

The City proposes to change health insurance coverage to the same coverage currently provided to other bargaining units and non-union positions. The City proposes to amend Section I of this Article to read as follows:

Section 1 – The City will continue to pay the full cost of monthly premiums for the plan provided to all employees for the duration of the Agreement, and employees shall continue to pay all applicable co-payments/office visits and other associated out-of-pocket cost charges, in addition to the deductible of Seven Hundred and Fifty Dollars (\$750.00) for single coverage and the deductible of One Thousand Five Hundred Dollars (\$1,500.00) for family coverage. The City shall have the right to change providers, however, the current levels of coverage shall be maintained for the duration of the Agreement.

UNION- No Proposal

DISCUSSION

The City's proposal is to change the health insurance coverage for this Union effective January 1, 2008 to correspond with health plan other units have which is an increase in cost to the Union members.

FACT-FINDER'S RECOMMENDATION

City's proposal denied.

RATIONALE

The City is requesting that the health insurance aspect be changed, at a cost of deductibles to Union members who have received no compensation increase since 2004.

ISSUE 3 – DURATION OF AGREEMENT

CITY

The City proposes a one year contract effective January 1, 2008 through December 31, 2008. The terms of that contract, except for insurance coverage in Article XXIV, will be those contained in the 2002-2004 collective bargaining agreement, revised, as appropriate, to conform to the ultimate decision of the Court on the appeal of the conciliator's award. The City proposes the following language:

Section 1 – This Agreement represents the complete agreement on all matters subject to bargaining between the Employer and the OPBA and except as otherwise noted herein, shall be effective January 1, 2008 and remain binding upon the parties and shall remain in full force and effect until 11:59 p.m., December 31, 2008. If either party desires to make any changes in the Agreement for a period subsequent to its expiration, notice of such a desire shall be given prior to the applicable statutory deadlines. If no notice seeking modification is given, the Agreement shall remain in effect for another year.

UNION-No Proposal

DISCUSSION – The City's proposal is a one year contract with only changes being health care insurance with the actual contract still unknown due to the appeal of the conciliators award.

FACT-FINDER RECOMMENDATION

City Proposal denied.

RATIONALE

Although a one year contract, at this point of time would be a very good cooling-off period for both parties, to require both parties to accept a contract that either party knows what it will be is not reasonable.

SUMMARY

The fact-finder was asked to rule on issues pertaining to a future contract not knowing if the previous contract January 1, 2005 to December 31, 2007 is indeed a contract, as all parties wait for a court decision. In this area of unknown, it seemed best to deny all proposals.

Although this is not the role of a fact-finder it would seem to this individual that both parties should consider meeting with a mediator to try to resolve the issues. It seems to this outsider that the issues are not that far apart. A completed contract at this time would be most beneficial to both parties.

Respectfully submitted,
Monday December 10, 2007

John Babel Jr.
Fact-Finder

Report was e-mailed to:

S. Randall Weltman SRWELT@sbcglobal.net

Kenneth B. Stark KSTARK@littler.com.

and overnight mailed to both parties on Monday, December 10, 2007.

Copy mailed to SERB