

FACTFINDING REPORT AND RECOMMENDATIONS THE EMPLOYMENT
RELATIONS BOARD

In The Matter Of

2009 APR -8 P 12: 34

The City of Norwood, Ohio

-and-

The Bargaining Committee of the Norwood, Ohio Police Division

SERB Case No. 2008-MED-09-0819

**Mollie H. Bowers
Factfinder**

Representing the City:

Charles King, Consultant
Chief William Schlie
Jim Stith, Auditor
Marcus Patterson, Deputy Auditor

Representing the Union:

Stephen Lazarus, Esq., Attorney
Officer James Sumner
Lieutenant Tom Fallon
Officer David Lewis
Officer Jeff Ripperger
Officer Jim Hicks

Date of Hearing:

March 9, 2009

Report Issued:

April 8, 2009

BACKGROUND

The parties to this dispute are The City of Norwood, Ohio (the City) and The Bargaining Committee of the Norwood, Ohio Police Division (the Union). The bargaining unit is comprised of all personnel from the rank of Patrol Officer through Captain. There is no dispute that the Chief of Police is, and always has been, excluded from this unit.

The parties have negotiated several collective bargaining agreements. In this instance, they have been attempting to negotiate an agreement encompassing the years 2009 through 2012. The following three issues have been resolved: (1) Article 12, Medical Insurance, Health Benefits; (2) Article 26, Promotions; and (3) Article 29, Tuition Reimbursement. Those agreements are incorporated, by reference, into this Factfinding Report.

Several issues remain in dispute. These are:

- Article 01 - Wages
- Article 2 - Table of Organization
- Article 3 - Minimum Manning Requirements
- Article 5 - Shift Differential
- Article 6 - Longevity
- Article 10 - Clothing and Equipment
- Article 21 - Seniority
- Article 23 - Terminal Benefits
- Article 29 - Pension Pickup (New Article)

As a result, the parties availed themselves of the dispute resolution process set forth in the Ohio Revised Code (ORC), Section 4117.14 (C)(3). The State Employment Relations Board (SERB) appointed Mollie H. Bowers to be the Factfinder from a roster of neutrals that it maintains. March 9, 2009 was the mutually agreed upon date for the Hearing. Both parties complied fully with the requirement to provide a pre-Hearing submission to the Factfinder.

HEARING

At the Hearing the City and the Union each introduced notebooks containing an array of information including the current collective bargaining agreement, past agreements, evidence on each of the disputed issues, comparability data, and so forth. The information contained in these notebooks was supplemented by additional evidence

and testimony. Depending on the issue being discussed, the designation of ‘moving party’ shifted between the parties.

ISSUES

I. Article 01 – Wages

A. Union Position

Originally, the Union asked for a 6% increase in pay for the Police in each of the three years of the proposed contract. The City did not “provide any substantive response to the Union proposal until the second to last negotiation session” held on December 4, 2008. (U-Tab 3) That proposal was for a 1.5% increase in the first year with re-openers in each of the next two years to determine wage rates. At the last negotiation session, on December 12, 2008, the City increased its offer to match that to which all other unions have now agreed – 2% in the first year with wage re-openers in the second and third year.

In its submission for the Hearing, the Union acknowledged that a smaller increase of 4% per year would be acceptable *if* all other matters in dispute were agreed upon. The Union believes that this increase is appropriate, in part, because the Police made significant concessions in the last negotiations to accommodate what the City said was its strapped financial condition. These concessions resulted in a 0% pay increase in the first year, followed by increases of 2% and 3%, respectively, in each of the subsequent years, and a reduction in health benefits.

The Union also asserted that its position is justified because Police pay has progressively fallen behind that of Norwood Fire Fighters for the last several years. For example, in the negotiations for the last contract, the Fire Fighters did not accede to the

City's request for concessions. Instead, they went to impasse and settled for a 1% increase in pay and the benefits afforded to the Police. The Union therefore opposed any effort by the City to push it into a 'me too' situation in this round of negotiations.

This position is also warranted, the Union maintained, because Fire Fighters in Norwood have fared very well, not only in relation to the Police, but also in relation to Fire Fighters in jurisdictions that both the City and the Union use as comparable. So well, in fact, that, in 2005, Conciliator Steven L. Ball (Fairfield Firefighters and the City of Fairfield) rejected the use of Norwood fire salaries because:

The median of the Union comparables supports the City's position. The apparently aberrant figures contained in the Norwood wage scale do skew the averages unfairly, especially upon such a small sampling of comparables.

The Union has developed seven criteria for determining what cities are comparable to Norwood. These criteria are:

- (a) Cities within Ohio that are within 1,500 in population, plus or minus, of Norwood (20, 102,000);
- (b) Median household income between \$18,085.00 and \$58,058.00 (Norwood \$38,805,00);
- (c) Median house value between \$69,104.00 and \$169,104.00 (Norwood \$119,104.00);
- (d) Population density of 2,500 or greater (No comparison to Norwood at 6,452);
- (e) Land area of less than 10 square miles (Norwood 3.12 square miles);
- (f) In the same county as Ohio's big 6 cities; and
- (g) Within 15 miles of one of Ohio's big 6 cities.

Application of these criteria resulted in the identification of five cities that the Union contends are comparable to Norwood. They are: Whitehall; South Euclid; Parma Heights; Mayfield Heights; and Brook Park.¹

¹ Whitehall is located proximate to Columbus, Ohio, while South Euclid, Parma Heights, Mayfield Heights, and Brook Park are located proximate to Cleveland, Ohio.

The data showed that, at both the Police Sergeant and the Police Lieutenant ranks, the pay in Norwood is substantially below that in all of the comparable jurisdictions. This was also true in terms of uniform allowance. Comparing Police to Fire Fighter salaries, *per se*, in each of the comparable jurisdictions with those in Norwood, the Union found that the Police in Norwood were paid 5.09% below the average in the comparable jurisdictions, whereas Fire Fighters in Norwood were paid 11.49% over those in comparable jurisdictions.

Using some of these same data, the Union also addressed pay for Police in the jurisdictions that the City argued are comparable to Norwood. Those cities are: Sharonville;² Blue Ash; and Fairfield. Based upon average pay for Police, the Union presented the following information in its Exhibit 5:

Norwood	-	\$61,657.32
Sharonville	-	\$66,955.20
Blue Ash	-	\$67,309.90
Fairfield	-	\$63,460.80
		TOTAL
		\$197,725.80
Divided by 3 =		\$65,908.60

Norwood is 6.9% below average in jurisdictions the City asserts are comparable. By any standard, the Union therefore maintains that its proposal for a 4% pay increase in each year of the three years in the impending contract is reasonable. The fact that Police agencies in Hamilton County are receiving pay increases, on average, of 3.27% in 2009, only strengthens the Union's position.

The Union provided data to show that there has been a 7.7% increase in the number of calls for police service in the City between 2004 and 2008. The number of

² According to the City, it relies most heavily on comparisons with Sharonville.

incidents in 2004 was 31,796 and in 200, the number was 34,471. Police have a critical role in protecting the safety of Norwood's citizens and in providing an environment conducive to both retraining existing business and to attracting new ones. They deserve something better than the 'me too' pay proposal accepted by other unions in the City. Furthermore, the City's proposal does nothing but increase the already growing disparity between Police and Fire Fighters in Norwood and between Norwood Police and their counterparts in comparable jurisdictions.

The City does not lack the resources to pay its Police properly. Since the last collective bargaining negotiations in 2006, the City's financial prospects have improved significantly. While some loss of business has occurred, there are also gains even if each, in and of itself, is not equivalent to, for example, the departure of Playing Cards from Norwood. The Union provided numerous examples, some of which include: Siemens Energy and Automation has a multi-million dollar expansion; Linden Pointe Development has been completed; Cinna Health Products relocated to Norwood; the American Laundry Building has been partially renovated and occupied; First Financial Bancorp moved its headquarters to Norwood in 2008; and so on, to support its representation.

Additionally, the City is scheduled to receive \$67,000.00 from the Federal Stimulus Package for crime prevention. The Union understands that none of these monies can be used to pay members of the bargaining unit. They can be used, however, to defray other expenses for the Police that would otherwise come out of funds available to pay the Police.

The Union also noted that the City had the opportunity to save approximately \$270,000.00 per year by divesting itself of the Health Department. A \$120,000.00 grant would be lost, and the care might not be equivalent. If the City wants to claim real or impending financial constraints, then this should have been a hard choice made by the City Council. Instead, the City Council voted to retain the Health Department.

In contrast to other parties, the Union rejects the City's proposal for a wage re-opener in the second and third year of the proposed contract. Part of the reason for the Union's rejection is contained in the positions has stated thus far. Another reason is that the City has refused to agree that a Conciliator could award a retroactive pay increase in the event that the parties are unable to negotiate a mutually acceptable settlement on re-opened wages.

Finally, the Union asked that a change be made in the time when pay increases are implemented. Currently, such increases are effective on January 1 of each year. This means that when there are 27 pay periods in a year, an increase falls in the middle of that period so members are partially paid at a lower rate. To correct this problem, the Union believes that pay increases should become effective after the 26th pay period.

B. Committee Position

The City proposed a 2% increase for the first year of the agreement and a wage re-opener to establish pay rates for 2010 and 2011. Negotiations for the second year would begin in November of 2009. The City first stated that all of the other unions representing its employees have agreed to this proposal. It believes that the Union should do the same. The City did state, however, that it has budgeted for a 2.5% increase for each of the next three years.

The City also pointed out that it is just emerging from a “fiscal watch” imposed by the state of Ohio. Although the revenue picture might appear to be a bit brighter now, the City maintained that predictions made in December of 2008 about the amount of the excess and of the percentage carry over vis-à-vis the previous year have turned out to be overstated. There are various reasons for this. Based upon data from Hamilton County, the *projections* are that there will be a decrease in revenues obtained from property taxes. Additionally, some major employers, like Playing Cards, are moving their operations out of Norwood. The City’s *projections* regarding other collections and sources of revenue likewise show a decline in the upcoming years. These developments will be coupled, the City says, with ever increasing and urgent needs for revitalization of its infra-structure.

The City presented data from SERB to argue that Norwood Police, regardless of rank, are well paid.

Additionally, the City maintained that it is planning to implement the state’s recommendation that an Emergency Fund be established. According to the City, it is generally recommended that such a fund contain three months’ of operating capital.

For purposes of comparison, the City uses Sharonville (the main comparable), Blue Ash, and sometimes Fairfield because they are similar in size to Norwood. These cities are all located in an area proximate to Norwood, and to Cincinnati and, thus are the appropriate bases for comparison. It rejects the Union’s comparables because none are located in the Cincinnati area.

C. Findings of Fact

The City is coming out of a “fiscal watch” imposed by the State of Ohio. The “fiscal watch” resulted largely from the gross mismanagement of funds by a prior administration.

Although the City’s prospects for excess and for carry over might be less than expected in December of 2008, the fact is that the City did not claim an inability to pay. Its presentations were based largely on *projections* which the Factfinder understands must be made, as well as that they may or may not be accurate in either a positive or a negative direction. Retention of the Health Department is not evidence that economy is the sole imperative driving decisions of the City Council. Both parties recognize that there is much hanging in the balance depending upon the Federal Stimulus Package and when its impacts are felt in Norwood.

The City rejected the criteria used and the cities identified by the Union as comparable. The only data presented by the City was from a SERB Benchmark Report. None of the jurisdictions cited in that report were those which the City claims are comparable to Norwood. In its Exhibit 5, the Union presented comparability data for Sharonville,³ Blue Ash, and Fairfield, the City’s comparables, which showed that Police pay in Norwood is 6.9% below the average for these jurisdictions.

The only rationale for these choices, other than size, seems to be proximity to Cincinnati; but not as close proximity as Norwood. In contrast, the seven criteria that the Union chose make more sense in terms of establishing comparability. Those criteria have a direct impact on such critical factors as: property and personal tax base; workload; concentration of work; and the potential for spill over crime because of the close proximity to an Ohio big 6 city. The City challenged the fact that all of the Union’s

³ The City emphasizes Sharonville because it is close in size.

examples were located outside of either Cleveland or Columbus, Ohio. While 'upstate' and 'downstate' geography can be a valid consideration in Ohio, in the instant case this does not trump the facts that, in the jurisdictions that the City offered as comparable, the personal and property tax base is better developed than that in Norwood,⁴ and all are much better protected from spill over crime from Cincinnati than Norwood is.

That is not to say that the factors affecting the tax base and other revenues in Norwood have been ignored by the Factfinder. Some major businesses have been lost (but some noteworthy and some smaller gains have been made), property tax revenues have declined with plummeting home values, collections are *projected* to decrease, revenues from the state and from Hamilton County appear to be fluctuating, however, revenue from replacement of the Tangible Personal Property Tax is increasing and is forecasted to increase considerably in the next three years. It is appropriate to *project* that funds from the Federal Stimulus Package will help to defray some non-pay related expenditures for Police in the years ahead.

The state has recommended that the City establish an Emergency Fund. Adherence to this recommendation is clearly not a priority for the City Council since it has taken no action. Whether the City Council *might* act sometime in the future is speculation beyond forecasting and, thus, not a valid basis for claiming that revenues should be reserved for this purpose.

For some time, there has been an obvious disparity between Police and Fire Fighter pay in Norwood. This disparity has been enlarged by pension considerations that will be addressed later in this Report. Nevertheless, the City did not respond, at all, to the

⁴ A fact that the City admitted and is discussed under the Union's proposed Article 28 -- Pension Pickup, later in this Report.

Union's proposals on pay until the time for the negotiations process had nearly expired. Then, the cookie cutter approach offered by the City completely ignored the disparity between Police and Fire Fighter pay, much less the concessions that the Police, in contrast to the Fire Fighters, made in 2006 because of the City's apparent financial plight.

Under these circumstances, it is understandable that the Union rejected the City's offer of a 2% increase in the first year of the 2009-2012 proposed contract. It is equally understandable that the Union rejected the City's offer of a wage re-opener in the second and third years because a Conciliator would not be allowed to award retroactive pay if the parties could not agree.

The Department has not experienced major problems recruiting and retaining personnel, however, there are some indications that that may change.

The Union's request for pay increases to be made at the end of the 26th pay period, instead of on January 1, to accommodate those years when there are 27 pay periods, is of *de minimis* importance given the other pressing issues at stake in this impasse.

D. Recommendations

The percentage pay increases for members of the Police bargaining unit (see also the discussion of the Union's proposed Article 28) should be:

Contract year 2009-2010 - 4%

Contract year 2010-2011 - 3%

Contract year 2011-2012 - 2.5%

The pay increase for the contract year 2009-2010 should be retroactive to January 1, 2009.

II. Article 2 – Table of Organization, Article 3 – Minimum Staffing Requirements

These articles are being considered in tandem because the positions of the parties and the facts pertaining to each overlap.

A. City Position

The City contended that both of these articles are permissive subjects of bargaining and, thus, is using these negotiations to object to their inclusion in a successor agreement. The City first relied upon the definitions of the terms “mandatory” and “permissive” subjects of bargaining to support its position. “Mandatory” subjects pertain to wages, hours, and working conditions over which the parties are explicitly obligated to negotiate. “Permissive” subjects are those matters over which an employer *may* agree to negotiate and which cannot be pushed to impasse by a union. The City does agree, however, that once a “permissive” subject is negotiated into a contract, enforcement of that language is mandatory for the duration of the contract.

In support its position, the City cited *In the Matter of the State Employment Relations Board, and Youngstown City School District Board of Education*, SERB 95-010 (1995), to assert that “Inclusion of a subject in [a] bargaining agreement does not render it [to be] a mandatory subject after [the] contract expiration”. In the instant case, the collective bargaining agreement has expired and, thus, the City maintained that it is free to decline to negotiate over Articles 2 and 3 contained in predecessor contracts.⁵

⁵ See also, *City of Cincinnati v. Ohio Council 8, American Federation of State County and Municipal Employees, AFL-CIO, et al.*, 61 Ohio St. 3d 658;576 N. E. 2d 745;1991 Ohio LEXIS 2123 (1991).

Referring again to Chapter 4114.08 of the Code, the City stressed that the language contained in Section (C) and in subparagraph (6) to support its position. That language states that:

(C) Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:

(6) Determine the adequacy of the work force;

The City said that it is obvious on its face that a contractual requirement establishing minimum staffing requirements impairs the Chief's and the City's right to determine the adequacy of the workforce.

To reinforce its view that a Factfinder should not rule otherwise, the City provided an excerpt from a 2006 Factfinding Report prepared by Mr. N. Eugene Brundige. In the case of *International Association of Firefighters (IAFF), Local 300 and City of Chillicothe, Ohio*, where minimum staffing was concerned, Mr. Brundige wrote as follows:

Matters of staffing are always worthy of careful consideration when dealing with safety forces. Having adequate staff relates to the safety of the employees and the public they serve.

This Fact Finder has a great deal of empathy for the position of the Union especially as it relates to having adequate staff to safely operate the fire equipment that is deployed.

However, a careful review of ORC 4117 reveals that staffing is a management right as enumerated in ORC 4117.08 (c)(6). [This section is then quoted as above.]

This makes the matter of staffing a permissive subject of bargaining which means the employer may, but is not required to, bargain such language.

Most Fact Finders, even if they have the legal authority to do so,

are hesitant to recommend inclusion of language relating to permissive subjects of bargaining.

I am of the same mind. I cannot recommend the *changes* sought by the Union in Article 23.9. (emphasis added)

For the aforesaid reasons, the City is adamant that it is not obligated to bargain over Articles 2. and 3., and that they should no longer be a part of any collective bargaining agreement between the City and the Union.

A. Union Position

The Union pointed out that language like that contained in Articles 2. and 3. has been incorporated into the collective bargaining agreements between these parties since 1988 and 1983, respectively. At no time prior to the instant negotiations has the City ever made an attempt to eliminate this language from the collective bargaining agreement. Given this fact, the City has long since lost any right that it might now claim to prevent it from bargaining over, much less to including, language pertaining to the Table of Organization and to Minimum Staffing Requirements in the Police collective bargaining agreement. This position is reinforced, the Union contended, by the fact that the case cited by the City as support, *SERB v. Youngstown City School District Board of Education*, was decided a year after what is now Article 2. was negotiated into the parties' agreement and seven years after what is now Article 3. first appeared in their agreement. Thus, the Union maintains that the *Youngstown* case has no standing in the instant situation.

Furthermore, the Union cited the language contained in Chapter 4117.08 of the Code to support its case. That language states:

- (A) All matters pertaining to wages, hours, or terms and other conditions of employment *and* the continuation, modification,

or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section and division (E) of Section 4117.03 of the Revised Code. (emphasis added)

The Union interpreted this language to mean that the disputed articles are subject to negotiation because they are a “continuation . . . of an existing provision of a collective bargaining agreement”.

The Union stressed that the City was still discussing Article 2. in the negotiations held on December 4, 2008. In particular, there was apparently a difference of opinion between the Mayor, who wanted a second Captain added to the Table, whereas the Chief did not believe that this was necessary. At the Hearing, the Union elicited testimony from Chief Schlie that what he really needed was at least an additional Lieutenant. Both the Chief and Lieutenant Fallon testified at length about the unmanageable juggling act and the shortcomings in supervision that occur because of the lack of an adequate number of lieutenants.

According to the Union, the importance of the Table of Organization cannot be underestimated. “. . . [T]he first time that the Department reached complement in recent history was at the end of 2007”. Prior to that, the Union provided evidence that numerous grievances were filed, even pursued to arbitration, which caused positions to be filled with “ ‘Acting’ officers in order to reach complement”.⁶ (U-Tab 4)

With respect to Article 3., the Union stated that the City initially proposed to eliminate it because it was a permissive subject of bargaining. However, at the negotiations session on December 12, 2008, “the City offered to leave in the minimum

⁶ One example was FMCS Case No. 040721-07001-8, was heard by this Factfinder in 2004. The grievance was sustained.

manning provision of the Labor Agreement with the number 5 and 6 as opposed to the current 6 and 7". (U-Tab 5)

Minimum staffing requirements are essential, not only to the safety of Police employees, but also to the safety of the public, and to retain and to attract businesses that provide a vital part of the City's ability to pay all of its obligations; including the Police.

B. Findings of Fact

There is, indeed, a difference, with distinction between "mandatory" and "permissive" subjects of bargaining, especially with regard to the obligation that an employer has to negotiate such subjects and the right of a union to push issues to impasse.

Negotiation of a Table of Organization and of Minimum Staffing Requirements is far from a new experience in the relationship between these parties.

The Factfinder agrees that the general language contained in Chapter 4117.08 (A) of the Code is modified by the more specific language contained in Section (C).

In general, the Factfinder agrees with Mr. Brundige's conclusions in the case of the *International Association of Firefighters (IAFF), Local 300 and City of Chillicothe, Ohio*. However, she noted that the City did not provide the full text of his Report so the context in which Mr. Brundige made this determination could not be evaluated. It appeared that when he used the word "changes" that this indicated that the impasse over which he presided was a negotiation of first impression over staffing requirements.

There is no evidence that the existing collective bargaining agreement between the parties was not adhered to even after it expired. Contrary to the City's position, this means that the *status quo* prevails until all issues in dispute between them are resolved. Otherwise, an employer could stall in negotiations until a contract expires and then do as it pleased thereafter. Any reasonable person would recognize that, especially where Police services are in question, the result would be chaos.

The City has come to Factfinding claiming that the subject matter in Articles 2. and 3. are "permissive" subjects of bargaining. The Factfinder agrees that they are, but not with the City's rationale for arguing that it is not obligated to negotiate over them in the instant case. First, if the City wished to make a change, then it should have adhered to the principles of good faith bargaining to do so. That is, the City should have provided consistent notice to the Union, from the outset, or at least within a reasonable period after bargaining commenced, that it was taking the firm stance that these are permissive subjects and that it would not negotiate them this time. The evidence is clear that this is not the course that the City followed. It presented offers on these subjects even up to the last minute, leading the Union to believe that negotiations over them were on-going. Then the City came to the Factfinding process armed with all the reasons why the Factfinder should tell the Union that these are permissive subjects of bargaining and, thus, that its positions should not be credited.

The pertinent evidence with respect to manning is the continuously rising use of Police Service, the problems created by seamless boundaries with Cincinnati, the importance of public safety, and the paramount need to maintain a community conducive to retaining and attracting business. This is not an environment in which, as the City

proposed, the minimum manning numbers should be decreased. Concessions in that direction have already been made by the Union in the 2006 negotiations.

C. Recommendations

The Chief is the operating head of the Department and, thus, is best equipped to know the ranks and numbers that mission accomplishment requires. The number of Lieutenants should be increased by one.

The Union's proposal that the minimum manning level should remain at the current 6 and 7 should be adopted.

III. Article 5 – Shift Differential

The parties have agreed to a shift differential of \$.80. This agreement is incorporated into this Report.

IV. Article 6 – Longevity

At the Factfinding Hearing, the Union stated that it is dropping this proposal.

V. Article 10 – Clothing and Equipment

At the Hearing, the City said that it agreed with the Union's proposals as follows:

Contract year 2009-2010 - \$900.00 – prorated by separate check if
Service was less than 1 year.

Contract Year 2010-2011 - \$950.00

Contract Year 2011-2012 - \$1,000.00

VII. Article 21 – Seniority

A. Union Position

This article has been discussed extensively in negotiations. Initially, the

Union's proposal was that:

Shift selection shall be based on fixed shifts and shall be according to seniority, subject to Management's right to modify a member's shift selection for cause which modification will not be done in an arbitrary and capricious manner.

Subsequent negotiations, in November of 2008, resulted in the following addition to this proposal:

Notwithstanding the above, the Chief of Police may determine to rotate police officers for up to two years from their date of hire. However, the most senior members of the department who desire to rotate may trade shifts with the new members, provided the new members consent.

The history behind these proposals is that the City had fixed shifts for a decade prior to 2007. In January of that year, rotating shifts were implemented by the Department. This action was grieved by the Union. On January 31, 2008, Arbitrator Lisa Salkovitz Kohn denied the grievance stating that "The Company did not violate the Agreement by instituting rotating shifts effective January 4, 2007". The Union maintains that Arbitrator Kohn did not really address the issue presented to her. Much of the same kind of testimony and evidence that was presented to Arbitrator Kohn was offered for the Factfinder's consideration in this proceeding. For example, the incidence of medical problems and the use of sick leave increased dramatically; families, children, and marriages were in trouble; sleep disorders developed. On the latter point, pharmacologist Martin Scharf, Ph.D. was again quoted as finding that liability issues can be elevated with rotating shifts because judgment is not as good. Before Arbitrator Kohn issued her award, the City decided to cease rotating shifts. In August of 2007, bargaining unit members were surveyed about these shifts. The results were overwhelmingly against

rotation. Nevertheless, rotating shifts were reinstated in 2008. Then, in 2009, fixed shifts were restored for all but nine Patrolmen and three Supervisors.

The Union contends that its proposals address the health and welfare of bargaining unit members, while protecting Management's rights. The language is narrowly tailored to address problems, but also provides flexibility by affording the Chief his right to rotate shifts for two years and at any time "for cause". The intent is to prevent the wholesale use of rotating shifts.

B. City Position

The City used testimony from Chief Schlie to show that, as the operating head of the Department, he does not want the language contained in the current contract to be changed. That language states:

Shift selection, whether under permanent, rotating or other conditions, shall be according to seniority, subject to Management's right to modify this selection for cause which modification will not be done in an arbitrary or capricious manner.

The Chief gave five main reasons for holding this view. First, rotating shifts are an effective means of counteracting stagnation in the Department. Officers on one shift need to know what is going on during other shifts and to be able to address those needs. Second, rotating shifts helps to minimize problems resulting from Officers and their Sergeants becoming either too friendly leading to the appearance of, if not the fact that there is favoritism. Or, in the reverse, the chaffing that can go on between Officers and Sergeants who do not get along well can be minimized. Third, the safety of all Police personnel is enhanced by rotation because they cannot be as easily targeted by criminal elements. Fourth, other departments in Hamilton County are returning to rotating shifts

for all of the same reasons. Fifth, the Chief did not want to “hand cuff” the discretion of future chiefs to determine what type of shifts best suited the needs of the Department at that time.

The City further argued that the only reason that the Union has proposed a change in the current contract language is because it is trying to redress its loss in the Kohn arbitration. In its pre-Hearing submission, the City also argued that determining shifts is “a management right that we do not believe should be in the contract”. (C-Tab 6)

C. Findings of Fact

Rotating shifts can have adverse effects on Police personnel.

The current language in the collective bargaining agreement has provided this Chief, and will provide future chiefs, with the flexibility he needs to best meet the needs of the Department at any given time.

Under the current contract language, Police personnel are already protected from the arbitrary or capricious modification of shift selection according to seniority.

Regardless of whether shifts are fixed or rotating, the public ultimately holds the Chief accountable for the Department’s success or failure in meeting its mission. The Chief therefore has the right to determine what type of shifts best meet the needs of the Department, as long as his discretion is not exercised in an arbitrary and capricious manner.

D. Recommendation

The language contained in the current collective bargaining agreement should remain unchanged.

VII. Article 23 – Terminal Benefits

A. Union Position

Throughout the current contract negotiations, the Union proposed that the following language be added to the collective bargaining agreement:

Upon retirement, each employee shall be entitled to 22.5% of his/her final year's salary, regardless of his or her retirement date.

The sole purpose for proposing this language was yet another attempt by the Union to achieve parity with the Fire Fighters.

B. City Position

The City did not address this proposal in its pre-Hearing submission to the Factfinder.

At the Hearing, the City stated that the 22.5% can into effect for Fire Fighters in 2004, under a different administration, and that it has to do with the hours that Fire Fighters bank. The City also said that it lacks the ability to pay for the same benefit for the Police.

C. Findings of Fact

It is understandable, giving the growing disparity between the compensation for Police and that for Fire Fighters in Norwood, that the Union would search for ways to rectify this situation.

While the City did not assert an inability to pay where wages are concerned, the data it presented in that regard support its position on this issue that it is unable to afford the benefit the Union seeks.

D. Recommendation

The Union's proposal should not be incorporated into the 2009-2012 collective bargaining agreement between these parties.

VIII. Article 28 – Pension Pickup

A. Union Position

New language that the Union proposed for inclusion in the new collective bargaining agreement is as follows:

Upon the effective date of this Agreement, the member's contribution to the Fund shall be (nine) 9% (i.e., the City [picks up] the remaining portion of the employee's required contribution, as well as the City's required contribution).

The provisions of this Section shall apply uniformly to all members and no member shall have the option to elect a wage increase or other benefit in lieu of the payment provided for herein. The City shall, in reporting and making remittances to the Fund, report that each member's contribution has been made as provided by statute.⁷

This proposal by the Union is also an effort to regain parity between Police and Fire Fighter benefits. According to the Union, a significant disparity exists because "the City pays 24% for each [Fire Fighter] as opposed to the 19.5% that is paid for [P]olice [O]fficers. By having the City pick up an additional [one] percent of the [Police employees'] share, the disparity between the [P]olice and [Fire Fighter] payments is lessened. (U-Tab 11)

The Union also points out that the cost of this proposal is "cheaper" for the City than pay increases because there are no "rollups or other costs that would be associated with across the board wage increases". (U-Tab 6)

⁷ The Fund referred to here is the Ohio Police and Fire Pension Fund, the Police and Firemen's Disability and Pension Fund of Ohio. This Fund divides "the pension contributions that are made on behalf of members between the individual member and the City. The City pays 19.5% of the employee's salary and the employee pays 10% of [his/her] salary". (U-Tab 11)

The Union acknowledged that there was little discussion of this issue at the bargaining table and, in any case, the City stated that it was not interested in providing this benefit.

B. City Position

The City did not address this issue in its pre-Hearing submission to the Factfinder.

At the Hearing, the City reiterated its consistent stance at the negotiating table that it did not want to provide this benefit. The City further asserted that it is required by statute to pay the prescribed portion of the Fire Fighters' contribution, that the disparity could be taken into consideration in terms of pay, and that its comparable jurisdictions (Sharonville, Blue Ash, and Fairfield) "have a lot more money than Norwood". And lastly, the City said that it did not want to negotiate this benefit with the Police because it feared a "snowball" effect in terms of the demands that unions representing other City employees would make.

C. Findings of Fact

Once again, it is understandable that the Union is endeavoring to reduce the disparity between Police and Fire Fighter compensation.

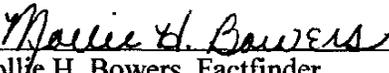
However, it is clear that the City made an express declaration throughout the negotiations that it was not going to bargain on this issue.

Regardless of the 'rollup' and other associated costs of pay increases, the City made it clear that it would prefer such increases to negotiating this benefit.

D. Recommendation

The Union's proposal should not be included in the 2009-2012 collective bargaining agreement. However, the City's willingness to consider pay in lieu of negotiating this benefit should be seriously evaluated when the City deliberates whether or not to accept this Factfinder's Report.

Date: April 7, 2009


Mollie H. Bowers, Factfinder