

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING PROCEEDINGS**

FINDINGS & RECOMMENDATIONS

AS ISSUED

GREGORY JAMES VAN PELT

September 28, 2009

IN THE MATTER OF:

City of Broadview Heights
(Employer)

-and-

Ohio Patrolmen's Benevolent Association
(Union)

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) SERB Case Nos.:
) 08-MED-10-1058
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APPEARANCES:

On Behalf of the Employer:

William E. Blackie, Esq.
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Cleveland, OH 44147-3599

On Behalf of the Union:

Jeff Perry
Staff Representative
P.O. Box 338003
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SUBMISSION

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in Agreements that became effective on January 1, 2006 and obtained through December 31, 2008. Mutually agreeing to an extension of the statutory deadlines and to retroactivity of recommendations to January 1, 2009, the Parties met in negotiations toward a successor contract on several occasions prior to reaching impasse on the issues enumerated below. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Fact-finder in the matter on March 31, 2009.

Having reached impasse, the Parties requested that the Fact-finder convene a mediation session to attempt resolution of issues outstanding. Accordingly, mediation was conducted on September 3, 2009 at the City's facility in Broadview Heights, Ohio. As a result of mediation, tentative agreement was reached on two issues identified below. However, the additional issues presented to the Factfinder remained unresolved. The remaining issues were submitted to the Factfinder at an evidentiary hearing, at which the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed on September 3, 2009.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

1. **Article 28 – Compensation**
2. **Article 22 – Vacations***
3. **Article 23 - Sick Leave***
4. **Article 36 – Duration of Agreement**

*Resolved at hearing by mutual agreement of the Parties.

TENTATIVE AGREEMENTS OF THE PARTIES

Prior to fact-finding, the Parties reached tentative agreement on a number of issues, included herein by reference.

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Fact-finder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(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;
- 4117-9-05(K)(3)** The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND AND STATUTORY CONSIDERATIONS

Broadview Heights (City or Employer) is a Charter City located in southeastern Cuyahoga County. The City operates a dispatch center for its own safety forces as well as providing service under contract to the adjacent community of Seven Hills. Those operations are carried out by seven Dispatchers, organized in a bargaining unit represented by the Ohio Patrolmen's Benevolent Association (OPBA or Association). The Parties relate under terms of a collective Agreement (Agreement) that took effect on January 1, 2006 and obtained through December 31, 2008.

Once a rapidly expanding suburb of solidly middle and upper-middle income residents, the City has more recently been affected by broadly declining economic conditions, as a result of which growth in Broadview Heights began to slow in recent years. As with many jurisdictions in Ohio and across the nation the City is experiencing a decline in general fund revenues at the same time its operating expenses continue to increase. Between December of 2005 and December of 2008, the City's General Fund Revenues from all sources increased slightly in 2006 from \$11,276,860 to \$11,567,217, then declined progressively to \$11,479,892 in 2007 and \$11,139,263 in 2008. Year to Date General Fund Revenues from all sources were \$7,887,552.19 in August of 2009, as compared to \$7,984,161.37 at the same time in 2008 a decline of some \$96,609. Income Tax Collections through August of 2009 indicate a shortfall of some \$285,608.52 between budgeted revenue projections of \$6,411,707.44 based on 2008 income tax revenue figures, and an actual August YTD net of \$6,126,098.92.

General Fund Balances carried forward reflect a similar decline: the City's ending General Fund balance was \$2,145,541 in December of 2005; \$1,775,745 in 2006; \$1,901,683 in 2007; and \$1,168,096 in December of 2008. However, as of August of 2009, the ending General Fund Balance was \$1,626,942.63, as compared to \$1,599,651.53 at the same time in 2008. That increase, the City contends, was largely due to a reduction in spending of some \$860,000 over 2008.

While the City is nearing completion of a number of major capital projects, those projects are largely funded through dedicated capital accounts and restricted endowments to the City. There was no evidence to indicate transfer of general fund monies to finance

capital improvements being undertaken by the City.

The City is party to a two-year contractual relationship with the City of Seven Hills to provide police and fire dispatch, as well as jail services. Under the terms of that agreement, the City received \$12,500.00 per month in 2007, and \$12,875.00 per month in 2008, to provide dispatch services to Seven Hills.

In addition to the declines noted above, in late April of 2009 the City was notified by the Cuyahoga County Auditor that real estate property valuations would be adjusted in 2009, resulting in an average decrease in real estate valuations in Broadview Heights of some 7%.

Comparison of jurisdictions within the regional labor market indicates that Broadview Heights Dispatchers are at approximately 96% of the average wage rate, exclusive of 2009 wage increases occurring during the third year of previously negotiated three-year contracts. Specifically, a comparison of some 26 regional communities submitted by the OPBA indicates that in 2008 dispatchers of ten year's seniority enjoyed an average top pay of \$44,429.84, and an average total compensation of \$47,483.88. Dispatchers in those same jurisdictions received gross wage increases ranging from 2.5% to 5.87%, with most in around 3%. By comparison, Broadview Heights Dispatchers were at 96.4% of those 2008 averages, and under neither the OPBA's or the City's proposals will they receive any wage increase in 2009.

Under the provisions of 4117-9-05(K)(2), the Fact-finder must also consider "factors peculiar to the area and classification involved." It is probable that the wage increases afforded bargaining units cited by the OPBA were negotiated in better times, and in communities not then contemplating the economic downturn of relatively recent onset. In the present proceedings, then, the specific financial condition of Broadview Heights, and considerations of internal rather than external parity, must be afforded greater weight in formulating the Fact-finder's recommendations than wage increases granted by other jurisdictions under other economic constraints.

In addition to the Dispatchers represented by the OPBA, the City's Police Patrol and Sergeants' Units are represented by Fraternal Order of Police Lodge 15 (FOP); the Firefighters are represented by Northern Ohio Fire Fighters, IAFF Local 3646 (Firefighters or IAFF); and the Corrections Officers by the FOP, Ohio Labor Council.

The City completed factfinding with its Firefighters on April 27th of 2009, when the

Report and Recommendations of Factfinder Robert G. Stein was issued and subsequently deemed accepted by the Parties. Under the terms of the Factfinder's Recommendations in those negotiations, IAFF bargaining unit members received no wage increase for the period January 1, 2009 through June 30, 2009; an increase of 2% for the period June 1, 2009 through December 31, 2009; and an additional 1% increase for the year 2010. The IAFF agreement further provided for re-opening negotiations regarding wages and health care for calendar year 2010 pursuant to the provisions of ORC 4117.14. Additionally, the language accepted at Article XXXVI of the Firefighters' agreement included a "me too" clause, providing for matching adjustment should any of the City's other bargaining units receive "general wage increases in 2009 or 2010 that are greater than those provided for [in the Firefighters' agreement]." Agreeing that a shorter contract term was "practical and reasonable", the City and its Firefighters mutually agreed to a duration of their contract of two years, from January 1, 2009 through December 31, 2010.

In June of 2009 the undersigned Factfinder issued Findings & Recommendations in the City's negotiations with its Police Patrol Officers and Sergeants represented by FOP Lodge 15. The Factfinder's report in that matter provided essentially the same contract terms as had been recommended in Factfinder Stein's report. That is, no wage increase for the first six months of 2009, with a 2% increase in base wage rates effective on July 1, 2009. However, unlike the Firefighter's contract, the duration of the FOP agreement was one year, ending on December 31, 2009.

Following acceptance of the Police and Fire contracts, the City completed negotiations with its Corrections Officers, represented by the Fraternal Order of Police Ohio Labor Council. That agreement provided for an increase in the "professional bonus" of \$300 in 2009, and an additional \$300 increase in January of 2010. Additionally, the City's Corrections Officers received a wage increase equal to approximately 6% of their base wage rates on October 1st of 2011.

Finally, in assessing the Parties' circumstances and formulating the recommendations herein, the Factfinder is not unmindful of "[t]he interests and welfare of the public . . ." as urged by OAC 4117-9-05(K)(3). The City has undertaken layoffs and reductions in force by attrition in other bargaining units, as well as certain un-represented City employees. The Employer argues that granting wage increases sought by the Dispatchers might result in

layoff of safety forces. While laying off Dispatchers might indeed be contrary to the public interest, no evidence was presented to indicate the extent and impact of such layoffs, or indeed whether they might be required even under the compensation recommendations urged by the Employer.

In consideration of these factors, and those discussed below, the Factfinder respectfully renders this Report & Recommendations.

FINDINGS AND RECOMMENDATIONS

Article 28 – Compensation

Current Contract Language:

28.01 The following compensation schedule shall be effective for all full-time dispatchers:

	<u>Effective Jan. 1, 2006 Hourly Rate</u>	<u>Effective Jan. 1, 2007 Hourly Rate</u>	<u>Effective Jan. 1, 2008 Hourly Rate</u>
0-12 months	\$14.24	\$14.67	\$15.11
12-24 months	\$14.99	\$15.44	\$15.90
24-36 months	\$17.49	\$18.02	\$18.56
36 months & above	\$19.42	\$20.00	\$20.60

Note: Employees may be hired at any of the above rates and management at its sole discretion may determine the timing of an employee’s wage increase within each monthly range.

28.02. In addition to the compensation specified in Section 28.01, full-time Dispatchers who have completed their probationary periods shall be entitled to an annual performance bonus in the amount of \$1,000.00. Performance bonuses are intended for months of active service only, and, therefore will be prorated as required. Payments will be paid in December of each year.

OPBA Proposal – as Amended:

At hearing the OPBA amended its initial proposal with regard to wages and duration of the Agreement to reflect the agreement on those issues reached by the City and its Corrections Officers.

That agreement provides for continuation of the present wage rates through October of 2011, at which time the Corrections Officers are to receive an increase to base wages of

6%. In addition to the October, 2011 wage increase, Corrections Officers received and increase in professional pay of \$300 in 2009, and an additional \$300 in 2010. Thus, the Corrections Officers received compensation increases amounting to between 6% and 7% over the life of the contract.

Increases in the Corrections bargaining unit were predicated on the City's acknowledgement that those Officers were sufficiently behind prevailing market wage rates as to warrant adjustment. The increases received by the Corrections Officers were based on the average compensation received by four area communities: North Royalton, Brecksville, Independence and Parma.

The OPBA submits that Broadview Heights Dispatchers are also behind comparable jurisdictions in the area, and have been so for a number of years. Specifically, a comparison of some 26 regional communities submitted by the OPBA indicates that in 2008 dispatchers of ten year's seniority enjoyed an average top pay of \$44, 429.84, and an average total compensation of \$47,483.88. Dispatchers in those same jurisdictions received gross wage increases ranging from 2.5% to 5.87%, with most in around 3%. By comparison, Broadview Heights Dispatchers were at 96.4% of those 2008 averages, and under neither the OPBA's or the City's proposals will they receive any wage increase in 2009.

Based on these considerations, the OPBA proposes that Dispatchers receive no wage increases for 2009 or the first six months of 2010; be afforded an increase equal to 2% of the individual employee's base wage rate on July 1, 2010; an additional 2% on January 1, 2011; and final 2% increase in base wages on July 1, 2020.

City Proposal – as Amended:

As did the OPBA, the Employer amended its initial wage proposal in order to facilitate a 3-year Agreement.

The City maintains that its position is based on a "continually and significantly worsening financial position." It contends that it does not have the finances to pay the wage increases sought by the OPBA.

While the City concedes that it recently concluded negotiations with its Police and Fire bargaining units, it contends that those agreements were reached before the most recent financial downturn and resultant cost-cutting measures were undertaken by the City. Additionally, the Fire Department is at least partially funded by a dedicated Fire levy the

balance of which covers fire salaries and the increases granted IAFF members. Moreover, compensation in both the FOP and IAFF agreements is limited to one year.

Corrections Officers received a three year agreement, with wage increases based on the significant disparity between Broadview Heights Jailers, and those of surrounding communities. Even then, wage increases were deferred until the last fiscal quarter of a three-year agreement.

Therefore, the City proposes no wage increases for Dispatchers in 2009 and 2010; a 2% increase in Dispatcher's base wage rates effective January 1, 2011; and an additional 2% increase effective July 1, 2011. In addition, the City seeks a re-opening regarding health care provisions on January 1, 2010 and January 1, 2011.

Findings and Recommendations:

There is little doubt as to the acuteness of the City's present financial circumstances. Income taxes, representing some 60% of City's revenues, have declined significantly. Documents submitted by the Employer indicate RITA income tax collections on behalf of Broadview Heights as of August of 2009 were some \$285,608.52 less than the same date last year. In addition, the City's real estate property tax base is undergoing a 7% devaluation under the County Auditor's initiative. City officials and non-represented employees have received no wage increases, and some have declined or repaid increases mandated under the City's Charter. Those bargaining units that did receive modest wage enhancements did so for one year only, with renegotiation to take place at the end of the current year, or deferred increases until the last quarter of a three-year agreement. The Factfinder also notes that the City has assumed increases in health insurance coverage amounting to some 7.6%.

Accepting the Union's comparable figures, in 2008 Broadview Heights Dispatchers were at 96.44% of the \$44,429.84 average top pay for 10 year employees, and 96.41% of the 2008 average total compensation. By contrast, the City's Corrections Officers were demonstrably below area market wage rates. Admittedly, these figures do not consider 2009 wage increases achieved by some jurisdictions in negotiations completed prior to the current economic difficulties. In any case, in situations in which a public employer is undergoing financial uncertainty, external comparables must be accorded less weight than might be the case when the economic conditions of peer communities are known to be more or less equal.

There was no indication that the City is having difficulty attracting and retaining qualified Dispatchers; in fact, virtually all agreed that bargaining unit members are exceptionally qualified and long-termed. Clearly, particularly when considering the Employer's current economic situation, no major adjustment to wage rates is necessary in order to raise OPBA members to prevailing market levels.

While the fact that Corrections Officers received a wage increase of 6% in October of 2011 – the final quarter of their contract – in addition to increases in their “professional bonuses” is a consideration here, the disparity between the wage rates received by Corrections Officers and the general market wage rates for jailers in the area is far greater than the minimal difference between Broadview Heights Dispatchers and their colleagues in peer communities. Accordingly, it cannot be determined that the Dispatchers are similarly situated, and thus should be brought to parity with the City's Corrections Officers with regard to wage increases in the current agreement (who, in any case, are below the Dispatchers in wages).

On the other hand, certain efficiencies are gained by both Parties in the OPBA's agreement to a three-year contract. It seems reasonable that those savings should, at least in part, be returned to bargaining unit members in the form of some assured wage increase not enjoyed by the City's Police and Fire units, who agreed only to limited contracts requiring renewed negotiations - and the associated costs. Additionally, the Dispatch bargaining unit comprises only seven members. While the Employer's financial situation requires that every expenditure - no matter how small - be carefully scrutinized, the cost of the wage increases recommended here is minimal when compared to the City's overall budget.

Broadview Heights is a vital, well-managed City. There is no reason to believe that its current economic situation is any more than a temporary reflection of the broader economic downturn, and that its condition will return to growth and prosperity in the future. Therefore, on the basis of the above considerations, a 5% wage increase, effective on the same date as that agreed to by the Corrections Officers, is recommended.

In addition, it is recommended that the Parties re-open negotiations on health care on January 1, 2010 and January 1, 2011, as necessary, to consider the recommendations of the labor-management health care committee.

Recommended Contract Language:

28.01 The following compensation schedule shall be effective for all full-time dispatchers:

	Effective Jan. 1, 2009 <u>Hourly Rate</u>	Effective Jan. 1, 2010 <u>Hourly Rate</u>	Effective Oct. 1, 2011 <u>Hourly Rate</u>
0-12 months	\$15.11	\$15.11	\$15.87
12-24 months	\$15.90	\$15.90	\$16.70
24-36 months	\$18.56	\$18.56	\$19.49
36 months & above	\$20.60	\$20.60	\$21.63

Note: Employees may be hired at any of the above rates and management at its sole discretion may determine the timing of an employee's wage increase within each monthly range.

Article 36 – Duration of Agreement

Findings and Recommendations:

Implicit in the revision of the Parties' initial positions was agreement that a successor Agreement would be retroactive to January 1, 2009 and obtain through December 31, 2011. Accordingly, that issue is deemed resolved at hearing through mutual agreement of the Parties.

SUMMARY OF RECOMMENDATIONS

1. **Article 28 – Compensation**
2. **Article 22 – Vacations***
3. **Article 23 - Sick Leave***
4. **Article 36 – Duration of Agreement***

*Resolved at hearing by mutual agreement of the Parties.

TENTATIVE AGREEMENTS OF THE PARTIES

Prior to factfinding, the Parties reached tentative agreement on a number of issues, included by reference herein.

/s/ Gregory James Van Pelt

Gregory James Van Pelt

Respectfully submitted this 28th day of September, 2009
At Shaker Heights, Cuyahoga County, Ohio