

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

2009 JUN 26 A 11: 26

STATE EMPLOYMENT
RELATIONS BOARD

In The Matter of Fact Finding Between

The Ohio Patrolmen's Benevolent
Association }
Employee Organization }

Case No.(s): 08-MED-10-1187
~~08-MED-10-1118~~
1188

AND }

The City of Fairview Park }
Ohio Public Employer }

Fact Finding Report
Michael King, Fact Finder

This matter was heard on June 16, 2009 in the City of Fairview Park, Ohio.

APPEARANCES:

For The Union:

S. Randall Weltman, Esq.
Ohio Patrolmen's Benevolent Association
10147 Royalton Road, Suite J
North Royalton, Ohio 44133

Eric Upperman, Police Lieutenant
Mike Anderson, Police Patrolman
Mark Gleba, Police Detective
John Martin, Police Sergeant
Bruce Mihalak, Police Patrolman

For The Employer:

William T. McGinty, Assistant Director of Law
City of Fairview Park
20777 Lorain Road
Fairview Park, Ohio 44126-2018

I. Introduction And Background

The undersigned, Michael King, was appointed Fact Finder by the State Employment Relations Board (SERB) on March 31, 2009. As Fact Finder the undersigned was tasked to conduct a hearing and issue a report with recommendations on each of the unresolved issues between the parties in their negotiations for a Collective Bargaining Agreement (CBA) to succeed the CBA that expired December 31, 2008.

The bargaining unit includes the following:

Unit A	Patrol Officers (Approximately 22)
Unit B	Sergeants and Lieutenants (5)

The parties began negotiations on a new contract in the fall of 2008. After approximately six (6) meetings they reached accord on all non-economic issues.

On December 2, 2008, the parties entered an Extension And Retroactivity Agreement, providing:

It is hereby agreed by the City of Fairview Park (Employer) and the Ohio Patrolmen's Benevolent Association (Union) to extend the parties' collective bargaining agreements and the time limits for the parties to initiate the process of fact-finding in the matter of contract negotiations between the Employer and the Union, SERB Case Nos. 08-MED-10-1187 (Patrol Officers) and 1188 (Sergeants and Lieutenants). Further, the Employer agrees that any increases in rates of compensation and/or benefits that are either negotiated, recommended or ordered will be retroactive to January 1, 2009.

The parties have negotiated numerous prior contracts, usually without resort to dispute resolution. An exception occurred during the last contract cycle.

Prior to the hearing the parties submitted pre-hearing statements pursuant to SERB Rules.

The Parties identified six (6) issues at impasse. These were: [1] Uniform and Equipment Allowance; [2] Rates of Pay; [3] Certification Pay; [4] Executive Officer Pay; [5] Manpower Formula; and [6] Duration of Contract.

II. Fact-Finder's Report

In reviewing the issues at impasse, and arriving at recommendations, I considered the parties written submissions and exhibits, oral presentations and testimony and the following factors as required by law:

- 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, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4] The lawful authority of the public employer;
- 5] Any stipulations of the parties;
- 6] Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

In preparing this report I have attempted to make recommendations that are reasonable based on the evidence presented, and that balance the legitimate economic interests of both parties.

III. **Unresolved Issues**

Issue # 1 Uniform and Equipment Allowance

Union Position:

The Union seeks to increase the annual uniform allowance to \$1650, from \$1,400. Such a change would on a cash-basis, create equality between the uniform allowances for the Fairview Park Police and Fairview Park Fire Fighters. However, the union believes that this request is modest, in that, the fire fighters' uniform allowance is far more generous. The city's contributions to fire fighter uniform purchases is greater, and the uniform itself is far simpler than the police uniform. Policemen, for example, have winter coats, spring coats, dress uniforms, nondress uniforms, long sleeves, short sleeves and leather goods.

Management Position:

The city proposes no change in the uniform allowance. However, it acknowledges that the police uniform may be more complex (and perhaps more expensive) than fire fighter uniforms. However, the city insists that its offer is fair and reasonable given the overall economic uncertainties faced by the nation and the region. Beyond this statement of economic uncertainty, Management failed to identify any justification for the disparity between the uniform allowances for its police and fire personnel.

Finding And Recommendation

Article 25 of the expired contract provided as follows:

25.01 During the term of this agreement, all employees shall receive a one thousand four hundred dollar (\$1,400) annual uniform allowance. This allowance shall be paid on a semi-annual basis.

25.02 Uniforms damaged from other than normal wear and tear shall be repaired or replaced as needed by the Employer.

The City of Fairview Park entered a new agreement with its firefighters effective January 1, 2009. Article 45 of that agreement provides as follows:

45.01 The Employer will pay all employees a uniform allowance annually, in two equal payments according to the following schedule:

Effective 2009 -- \$1,650

Effective 2010 -- \$1,650

45.02 The Employer shall continue to provide the appropriate “turn-out” gear to employees.

45.03 The Employer shall buy initial issue uniforms and replace torn and damaged uniforms, except for wear and tear. In the event the Employer substantially changes the employee uniform or any part thereof, the Employer shall provide one issue of those uniform items that have changed to each employee. In the event of a change as contemplated above, each employee shall be subject to an annual deductible of twenty-five (\$25) dollars.

I find that the police officers’ uniform allowance is less generous than that given to firefighters, and that this differential isn’t justified by the relative costs of the uniforms. Therefore, I recommend that the police uniform allowance be raised to the same level as that given to Fairview Part Firefighters, and that the contract language proposed by the union be accepted. That language is:

25.01 During the term of this agreement, all employees shall receive an annual uniform allowance in the amount of one thousand six hundred and fifty dollars (\$1,650) or the amount of uniform allowance granted to the Employer’s Firefighters, whichever amount is greater. This allowance shall be paid on a semi-annual basis.

Issue #2 Rates of Pay

Management Position:

The City offered a wage increase of two percent (2%) in the first year of the contract, and Zero percent (0%) thereafter. Management made a conditional offer of a one percent (1%) wage increase in the second year of the contract. That proposed second year increase was conditioned on the Union agreeing to a fifteen percent (15%) decrease in the starting wage of new police officers. Under Management’s proposal, “the new hire would then receive a pay increase yearly until the policeman reached the regular rate at the end of the fourth year of service.”

Alternatively, the City offered the Union a contingent pay rate plan. Under that plan the wage rate would be tied to some aspect of the City’s income, for example tax revenue receipts, or general fund balance. Such a plan isn’t in place for any other employee group.

The City doesn't argue inability to pay. Fairview Park notes that it has cash, but says that cash should be used prudently because of current economic uncertainty. It notes that the Cuyahoga County Auditor informed the city on April 23, 2009, of a proposed nine (9) percent decrease in valuation of real property in the City of Fairview Park. (See Appendix A) Also, its income tax collections generally trailed last year. It offered this comparative data:

	2008	2009
January	\$301,413	\$351,911
February	\$448,546	\$387,131
March	\$371,017	\$331,303
April	\$353,080	\$337,700
May	\$695,664	\$553,487

Union Position:

The Union rejects a contingent wage agreement. It is philosophically opposed to a contingent wage agreement fearing members of the bargaining unit could suffer financially through no fault of their own. The Union isn't necessarily opposed to a two-tiered wage, wherein new hires get a lower wage, to be brought to parity over some period of time. However, the Union feels such would have to be part of an overall agreement.

The Union argues that the Fact Finding related to the previous contract determined that wages for Fairview Park's policemen were below the peer group. As a result the Fact Finding report included percentage increases and lump sum payments designed to help the department "catch-up." That report, by Fact Finder Nels E. Nelson, dated November 2, 2006, included the following:

- 26.01 All bargaining unit employees' basic wage rates shall be increased as follows: Effective July 1, 2006 -- \$1,000 plus 2%; Effective January 1, 2007 -- \$500 plus 3%; Effective January 1, 2008 -- \$500 plus 2 ½ %

The Union believes that Management's wage proposal would return the police to a level where they would again fall behind their peer group. The Union offers a peer group of police departments in the neighboring communities of Lakewood, North Olmsted, Rocky River, and Westlake. (See Appendix B) Those communities provide gross wages for a ten-year (10) patrol officer as follows:

Lakewood	\$62,544.00
North Olmsted	\$68,457.20
Rocky River	\$67,907.78
Westlake	\$66,575.26
Fairview Park	\$66,474.81

The Union dismisses the City's economic hard times argument as speculative, and states that the city has the money to make a reasonable wage adjustment. It notes that the Mayor received a substantial wage increase, and that Fairview Park continues to spend generously on various projects including recreation and economic development.

Finding And Recommendation

I find that a wage increase in excess of that offered is appropriate. At the same time, I also find that the City has legitimate concerns about tax revenues and the current economic climate. The City's new contract with firefighters provides for a two percent (2) wage increase in the first year, and a one percent (1) increase in the second year. However, firefighters were aware that police officers were going to fact finding. As a result, International Association of Fire Fighters Local 1057, agreed with the City to a contract addendum, to wit:

L 1057 shall receive any additional benefits increase that the police receive in their final settlement package of the current bargaining session. Additional salary increase (sic) are as follows: L1057 shall receive any salary increase enjoyed by the police in excess of four percent (4) over the term of the two-year contract. L1057 shall receive the benefit increase in excess of four percent (4) in year two. In the event the police receive over three percent (3) in a one-year contract, L 1057 would be entitled to an increase in any amount in excess of three percent (3) in 2009.

I recommend that members of the bargaining unit receive a wage increase of two percent (2) in the first year of the contract, and two percent (2) in the second year of the contract. In addition I recommend establishment of a two-tiered wage system, wherein new hires would be paid fifteen percent (15) less than the current entry level wage, and that said new hires shall be brought to parity with the department's prevailing wage in equal increments over a four-year period. This two-tiered wage could provide substantial savings to the city in the years ahead.

Union Position.

The Union notes that bargaining unit members must receive annual certification for firearms, and for LEADS computer system. Noting that its pay package may otherwise be eroded, the Union asks to be compensated for these annual certifications. This type of certification pay is available to officers in peer jurisdictions. Examples of firearms proficiency certification pay include the following:

Lakewood	\$1,000
North Olmsted	\$1,400
Rocky River	\$1,450

Management Position:

Management notes that North Olmsted is in financial distress. It believes that this financial distress was partly caused because North Olmsted accepted wage and benefit increases it really couldn't afford. That said, Management again notes that it seeks an overall settlement that is prudent, and won't result in layoffs. Moreover, the City says of the policemen's proposal: If they're not certified, they're not policemen. If seems they are asking to be paid for something they are already getting paid for."

Finding And Recommendation:

I find that certification is an appropriate way to recognize the contribution of police officers to the city's success, and to add value to their contract. Such a payment would have little if any impact on other city contracts, and might be less expensive than a wage increase of the same amount. I recommend an annual payment for firearms certification. I suggest the following contract language:

In accordance with standards established by the Chief of Police, all bargaining unit members shall be required to annually complete an approved Firearms re-certification program. Employees who successfully complete such program shall be granted a cash stipend in the amount of \$1,000. At the discretion of the city, said stipend may be paid in up to two installments over a period of up to six (6) months.

Issue # 4 Executive Officer Pay

Union Position:

The Union seeks a five percent (5) differential in the pay of the executive officer over the pay rate for a lieutenant. Sometime ago, the City abolished the position of police captain. The result is that the former captain now serves as executive officer. That person took a pay cut, but has more duties than before. "The Executive Officer performs the duties of a Lieutenant as well as the duties he performed before his Captain's position was abolished," the Union argues. "In essence the City requires the Executive Officer to perform the duties of two (2) separate ranks. As such the Executive Officer's position should be entitled to more pay than the Lieutenant's position."

Management Position

Management repeats its concern that because of economic conditions spending must be prudent and conservative. The City is anxious to do what's best for all of its citizens, and to avoid a layoff situation.

Finding And Recommendation:

I accept the Union's concern over this issue. However, I believe the Union hasn't made an adequate showing to justify its proposed contract modification. The City abolished the rank of captain. The Union suggestion seems to be a *de facto* restoration of that rank. If the position is to be restored, the parties should approach that head on.

I recommend no change on this issue.

Issue # 5 Manpower Formula

Union Position

The Union proposes a change in the formula used to calculate the minimum manpower needed on each shift to fulfill the security needs of the city. The current formula counts clerks and administrators who aren't members of the bargaining unit. In support of its position, the Union points to a manpower requirement found in the City's current contract with the firefighters. An addendum to that agreement provides as follows:

The City agrees to assign nine (9) firefighters to each of the three (3) shifts. When an individual shift has nine (9) firefighters assigned, up to three (3) firefighters may be granted paid time off in accordance with the Collective Bargaining Agreement.

If there are eight (8) or fewer firefighters assigned to a shift and, due to a combination of paid time off and paid sick leave use, fewer than six (6) firefighters report to work for that particular shift, the City is required to authorize overtime in order to ensure that there are six (6) firefighters working for that particular shift.

The Union offers the following contract language:

38.04 The Employer shall be prohibited from establishing or utilizing shift minimum manpower formulas that include any employees other than bargaining unit members.

Management Position

Management believes that the Union proposal is an improper usurpation of management rights. "A city in our position has to be able to be in charge of its police department," Management argues. Moreover, the City states that the parties never really negotiated about this. The matter had been mentioned during negotiations, and was included in the position statement filed by the Union and served on Management three (3) business days prior to the fact-finding hearing. Nonetheless, Management believes the proposal was never discussed in a substantive way prior to the hearing. "This is a non-issue. It hasn't been fully discussed or vetted out. To throw it out at the last minute is a red herring. Management has the right to deploy its personnel," the City insists.

Finding And Recommendation:

I find that the suggested matter is the kind of issue over which the City has come to agreement with firefighters. Where appropriate, it is desirable to maintain some comparability between the two crafts. I conclude that the suggested change in manpower calculation formula is appropriate and should be accepted. Because it likely will affect overtime expenses, I suggest that the change be delayed.

I suggest the following contract wording:

Effective January 1, 2010, the Employer shall not establish or utilize shift minimum manpower formulas that include any employees other than bargaining unit members.

Issue # 6 Contract Duration

Union Position

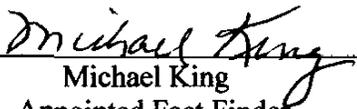
The Union notes that it has traditionally entered three-year contracts with Fairview Park, and that in fact three-year contracts are the industry standard. It argues that there is no reason to change the existing practice.

Management Position:

Fairview Park argues that continuing economic uncertainty for the nation and the region justify a shorter contract. According to the City, its exhibits make clear that there remains a risk of falling tax revenues over the next several years. For that reason, Management has entered two-year (2) contracts with its other unions, and it desires a two-year contract with police.

Findings And Recommendation:

I find there is adequate evidence of a risk to tax revenues. I conclude that a two-year (2) collective bargaining agreement is a reasonable compromise as part of an overall agreement that includes reasonable improvement in the economic package of the bargaining unit. I recommend that the parties enter a two-year (2) agreement to be effective from January 1, 2009, until December 31, 2010.



Michael King
Appointed Fact Finder

Date: June 23, 2009
Westlake, Ohio



FRANK RUSSO
CUYAHOGA COUNTY AUDITOR

April 23, 2009

City of Fairview Park
Mayor Eileen Patton
20777 Lorain Road
Fairview Park, 44126

Dear Mayor Patton,

As is required by Ohio law, real estate property valuations for Cuyahoga County will be updated in 2009. My office has calculated the proposed real property valuations based on statistical analysis of sales prices and market conditions of each municipality.

The proposed valuations have been sent to the State of Ohio Taxation Department for final approval. The proposed adjustment for the City of Fairview Park is a decrease on average of 9%.

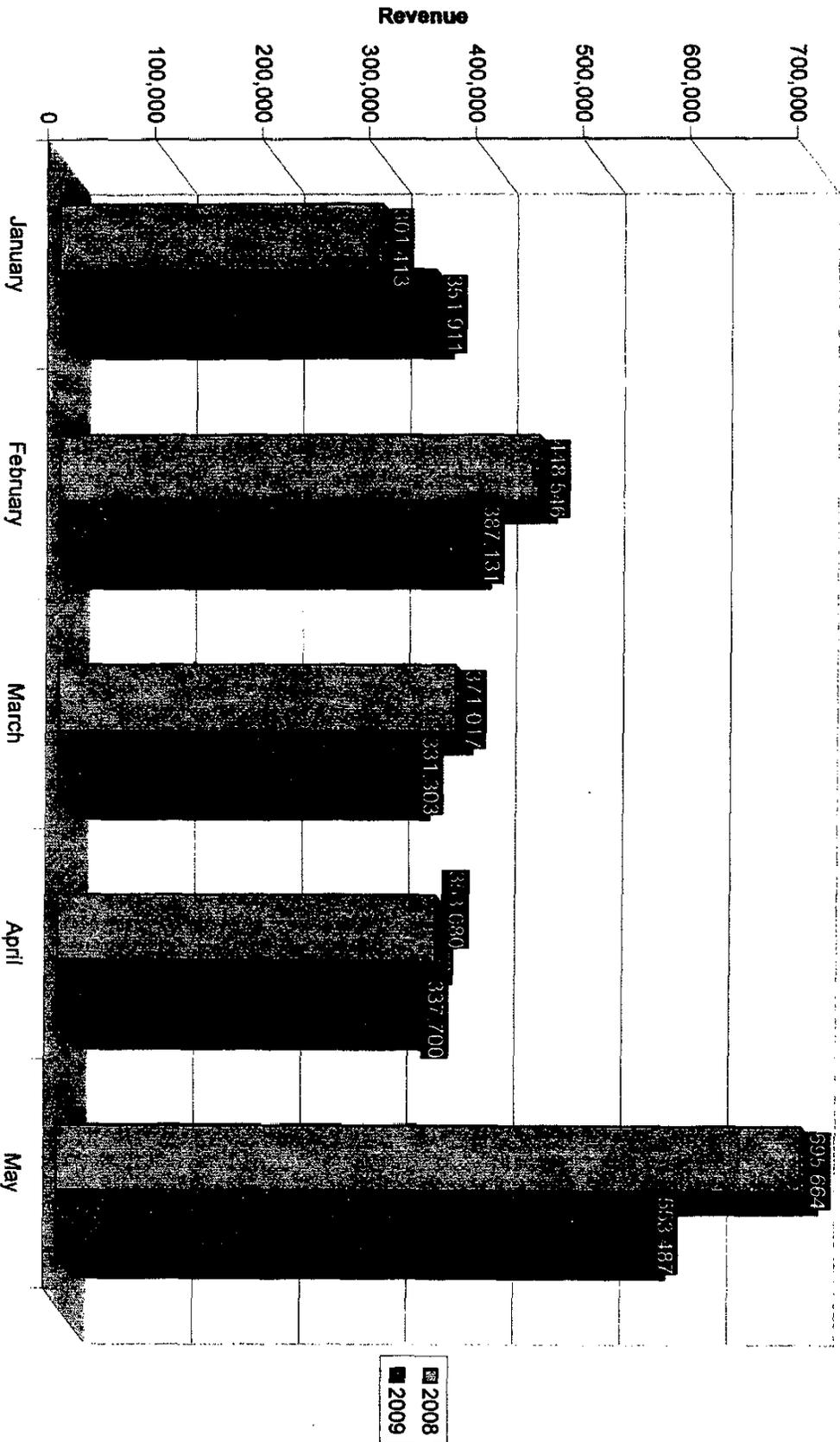
If you have questions or concerns; please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script that reads 'Frank Russo'.

Frank Russo
Cuyahoga County Auditor

2008/2009 INCOME TAX COLLECTION



2009 City of Fairview Park Negotiations
 Comparison Of Benefits for ten year Patrol Officer - Contiguous Municipalities

UNION EX. 1

Jurisdiction	Population	2008 Top Pay	Uniform Allowance	Annual Shift Differential	Longevity	Other	Total	2009 GWI	Rank Differential
Lakewood	56,646	\$59,544.00	\$1,000.00	\$0.00	\$1,000.00	\$1,000.00	\$62,544.00	2.5%	19%
North Olmsted	34,113	\$61,464.00	\$1,350.00	\$1,170.00	\$3,073.20	\$1,400.00	\$68,457.20	0%	13%
Rocky River	20,735	\$64,022.79	\$600.00	\$554.53	\$1,280.46	\$1,450.00	\$67,907.78	2.25%	13.25%
Westlake	31,719	\$63,940.00	\$1,150.00	\$485.26	\$1,000.00	\$0.00	\$66,575.26	3.75%	13%
Fairview Park	17,572	\$64,074.81	\$1,400.00	\$0.00	\$1,000.00	\$0.00	\$66,474.81		13%
Average		\$62,609.12					\$66,391.81		
Fairview Park % of Average							100.13%		

- * Lakewood - Other is Firearms Proficiency
- * North Olmsted - Other is Firearms Proficiency
- * Rocky River - Other is Firearms Proficiency

Corrected Fact Finding Opinion; Case No. 08-MED-10-1187 & 1188

From: **michael king** (michaelruler@hotmail.com)
Sent: Wed 6/24/09 9:12 PM
To: Edward Turner (edward.turner@serb.state.oh.us)
Cc: kara.rose@serb.state.oh.us

Good afternoon--

I am the fact finder on the above-referenced case (OPBA and City of Fairview Park). On June 23, I sent to you via regular U. S. Mail an opinion in that matter. Unfortunately, that order includes an error that I have corrected. A corrected copy is being sent to you via FedEx and should reach you by mid-morning June 25 (probably about the same time that the mailed copy reaches). Please accept the Fedex copy and destroy the mailed copy.

Thank you.

Best regards,

Michael King

P O Box 221312

Beachwood, Ohio 44122

440-617-9213

Insert movie times and more without leaving Hotmail®. See how.

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