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FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
April 16, 2009

In the Matter of:)
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The City of Barberton)
)
)
and)
)
)
Ohio Patrolmen's Benevolent)
Association (OPBA))

SERB Case No.
08-MED-10-1223

APPEARANCES

For the Union:

Randy Weltman, Esq. OPBA Attorney
Merl Rich, OPBA Director

For the City:

Michael Esposito, Esq. Account Manager, Clemans, Nelson, & Associates, Inc.
Raymond Todd Safety/HR Director, City of Barberton
Michael Kaili Chief of Police, City of Barberton

Fact Finder: Dennis M. Byrne

Background

The fact finding involves a wage re-opener for a collective bargaining agreement. As way of backdrop, this is a small bargaining unit comprised of employees in the classification of Dispatcher/Jailer that perform in addition to dispatch functions, monitoring functions of inmates in the City's municipal jail facility. All other City bargaining units already have agreements in place, with the wage terms being a three percent (3%) for each year of the bargaining agreement.

A Fact Finding Hearing was scheduled for March 25, 2009. By agreement of the parties, and since this matter encompasses the issue of wages solely, the parties elected to submit briefs and supporting documentation so that the undersigned fact finder can evaluate and issue a decision in this case without the need for hearing.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 private employment.

Introduction

In recent months the state of the economy has become almost a daily topic of conversation. Ohio's economy remains uncertain at best, as does the financial outlook for many Ohio public employers. Recently, the Governor outlined the considerable magnitude of Ohio's revenue shortfall both in the current and next biennium budgets, and the necessity of having to take decisive action to reduce costs in order to balance the state's budget. This cost cutting will likely result in the layoff of state employees, and in an attempt to avoid this, state employees have agreed to wage freezes and unpaid furloughs. Adding this backdrop is the overall impact of a national economy in prolonged recession with little certainty of its length or breadth. Recently, the national unemployment rate reached a fifteen year high of 6.7% (with a loss of over 500,000 jobs nationally in the last month alone). Approximately 225,000 Ohio jobs, many of which were high paying manufacturing jobs, have been lost during the past ten years. A large number of these jobs were lost to outsourcing. Moreover, the woes of the domestic auto industry and its potential direct and secondary ripple effect on jobs in Ohio looms as the auto industry seeks congressional loan relief. Compounding the problem of job losses is the recent credit crunch and its impact upon housing values.

However, the overall extent to which these serious financial conditions impact the City of Barberton may not be quite as dire, and at this time, the City voice serious concerns about its ability to even continue the previous three percent (3%) pattern term of the Collective Bargaining Agreements previously reached, much less agree to a wage amount in excess of that as the union has proposed.

The union avers to the City's concerns and asserts that its members, by virtue of their additional jailer functions, perform services that should be far more valued than the current level of compensation provided by the City of Barberton. The union points to other municipal dispatch operations and the rates of compensation, in order to support its claim that its members deserve compensation in excess of that which has been provided to other City bargaining units. They perform more duties than these other operations, yet are compensated in a substandard fashion. Since this is such a small unit, bringing about a more equitable level of compensation for these employees will not prove overly costly.

In contrast, the City believes that the members of this bargaining unit are compensated fairly and, while not at the forefront of comparable jurisdictions in terms of compensation, are paid at a level commensurate with the City's relative standing among comparable jurisdictions. The City further states that the three percent (3%) wage package reached for other units should not be controlling in the sense that circumstances have changed substantially since the resolution of those agreements. The City has had to essentially burn through all of its excess carry-over funding to balance the 2009 budget, and has had to slash expenditures to satisfy its budgetary mandates. The union took the risk of accepting a re-opener provision as opposed to the defined increases in the other contracts hoping that economic circumstances would improve for their re-opener. As such they must bear the risk that things may get worse, and correspondingly, the wage increase given previously may not be warranted.

Issue: 2009 & 2010 Wage Increase

City Position: The City offers the union a 2% wage increase retroactive to January 1, 2009 and a wage re-opener for the year 2010. It states that in the current economic climate it cannot be expected to continue the pattern of wage increases granted to other units, nor be locked into a defined wage increase for this unit when its future is very uncertain.

Union Position: The Union believes that wage in excess of 3% effective January 1, 2009 and January 1, 2010 are warranted. It has proposed a revised wage schedule that would yield increases in amounts greater than 3% for several steps of the revised wage schedule. Based on the additional duties performed by this unit relative to other municipal dispatch operations, the claimed substandard current level of compensation, and the small unit size, such an increase is justified and would not represent an overly costly expenditure.

Discussion: Both parties' positions have some merit, but the most significant factor in this current proceeding is the current economy. With continued job losses, revenue decreases, and funding challenges, across the public sector employers have had to tighten their belts and look at ways to continue the level of service to the public without seeking additional funds from its citizens. Such is the case here where the Mayor has required all departments to slash expenditures in an effort to avoid service reductions.

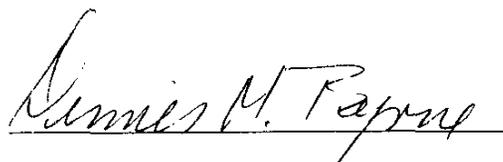
In doing so, however, the City had already budgeted for a 3% increase for this unit, based on what it had given other units. While the unit would like things to be different, the fact of the matter is that it would be unreasonable to provide an increase in excess of what has

been planned for during these economic times. Likewise, while the City would like to see less, the small size of this unit cuts against treating them differently.

Lastly, inasmuch as the Employer has proposed a re-opener and the union has indicated that it would like the opportunity to press its case in the final year of the agreement for a differing wage amount than other units received, such will also become part of this recommendation. Accordingly, the following recommendation is made.

Award: Effective January 1, 2009, bargaining unit members will receive a three percent (3.0%) general wage increase to their existing rates of pay. For the year 2010, the union may file to re-open negotiations on wages only. Once commenced, the re-opener will proceed in accordance with R.C. 4117.

Signed this 16th day of April 2009, at Munroe Falls, Ohio.

A handwritten signature in cursive script that reads "Dennis M. Byrne". The signature is written in black ink and is positioned above a horizontal line.

Dennis M. Byrne, Fact Finder



Dennis M. Byrne

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April 16, 2009

Mr. Edward Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

STATE EMPLOYMENT
RELATIONS BOARD
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Re: Case No. 08-MED-10-1233 (OPBA v. City of Barberton)

Dear Mr. Turner:

I am enclosing the report in the above referenced matter. The parties were able to come to a mediated/negotiated agreement and they wished to have a report outlining their agreement. Therefore, I believe that this matter is settled, and that both parties will ratify the agreement.

If you have any questions about this matter, please contact me.

Sincerely,

Dennis M. Byrne
Arbitrator



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Dennis M. Byrne, Ph.D.
Arbitrator
272 Cheltenham Lane
Munroe Falls, OH 44262

TO:

Mr. Edward Turner
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State Employment Relations Board
65 East State Street, 12th Floor
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