

ALAN M. WOLK, J.D.
IMPARTIAL FACT-FINDER

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN:

CITY OF LAKEWOOD, OHIO)	
)	
EMPLOYER)	SERB NO. <u>09-MED-09-0958</u>
)	
and)	<u>Fulltime Dispatcher Unit</u>
)	
FRATERNAL ORDER OF POLICE)	
OHIO LABOR COUNCIL [FOP/OLC, Inc.])	
)	
Union)	

Appearances:

FOR THE EMPLOYER:

JON M. DILENO, Eq. of Zashin & Rich

FOR THE UNION:

LUCY A. DiNARDO, Staff Representative

History of the Proceedings

Pursuant to Ohio Revised Code Chapter 4117, Section 4117.14(C), and by letter issued by SERB, the undersigned was selected by the parties through the State Employment Relations Board of Ohio [SERB] to serve as impartial neutral fact-finder to hear and decide issues presented pursuant to Ohio law.

Except to the extent that parties mutually agree otherwise, or wish to pursue mediation first, in compliance with Ohio Administrative Regulations, particularly 4117-9-05, PRE-HEARING STATEMENTS were timely submitted to the opposing parties and to the Fact-Finder prior to the hearing, as well as EXHIBITS presented at the hearing documenting facts and positions

Hearing commenced at 9:30 a.m. at Lakewood City Hall on Thursday, August 19, 2010. A court reporter was not present.

Submission

I. PARTIES

The Union is the FRATERNAL ORDER OF POLICE OHIO LABOR COUNCIL Inc. and its 222 E. Town Street, Columbus, Ohio 43215-4611. Phone: 614-224-5700.

The Union's Staff Representative is Lucy A. DiNardo, 2721 Manchester Road, Akron Ohio 44319-1020. Phone: 330-753-7080, FAX: 330-753-8955; CELL: 440-521-2303; Email ldinardofop@wowway.com. The employees are responsible for safety dispatcher functions for the City of Lakewood, Ohio.

The Employer is The City of Lakewood, Ohio , with administrative offices located at 12650 Detroit Avenue, Lakewood, Ohio 44107, in Cuyahoga County, Ohio; The Mayor is Ed Fitzgerald c/o City Hall: (216) 521-7580; the Law Director of the City of Lakewood is Nora L. Hurley, Phone: (216) 529-6030, Fax: (216) 228-2514, Email: nora.hurley@lakewood.oh.net

The City of Lakewood is located on the northern shore of Lake Erie, West and partly North of the City of Cleveland and East of the City of Rocky River. It is geographically approximately 5.6 square miles with a population of approximately 56,000 residents.

The Employer's principal representative: JON M. DILENO, Esq. of Zashin & Rich, LPA; 55 Public Square 4th Floor, Cleveland, Ohio 44113, Phone: 216-696-4441, FAX: 216-696-1618 Cell: 216-789-9013 Email: jmd@zrlaw.com.

II. Description of the Bargaining Unit

The bargaining unit consists of approximately eleven (11) employees classified as dispatchers

The Union became exclusive representative of the Fulltime Dispatchers bargaining unit(s) on June 7, 1990.

III. Current Collective Bargaining Agreement

The current Collective Bargaining Agreements for the Dispatchers expired: February 28, 2010.

V. Current negotiation history

Negotiations for the parties' contract commenced October 20, 2009; meetings were held February 11, 2010 and February 24, 2010, the parties met at least a total of five (5) times prior to the hearing.

Full consideration of statutory guidelines has been applied in determining FINDINGS and RECOMMENDATIONS, i.e.

Criteria

The FACT-FINDER, in making Recommendations, shall take into consideration all reliable information relevant to the issues, including, but not limited to:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of unresolved 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 standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties; and
- (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 agree upon dispute settlement procedures in the public service, or in private employment.

Proceedings

At the mutual request of the parties a process of mediation was facilitated by the Fact-Finder and positions were presented and explained by the parties.

Issues that were mutually agreed upon appear below referred to as Tentative Agreements, together with FINDINGS and RECOMMENDATIONS regarding disputed issues.

Ballot approval by the constituent parties is required.

Issues in dispute:

According to evidence*, the City is in financial crisis. Its \$4 million deficit in 2008 forced the layoff of 80 part-time and full-time employees in 2008. These difficulties continued in for 2009 and thus far in 2010. Some services, including the closing of the City Health Department and the reduction of staffing in its Department of Aging; some positions were abolished and some vacancies were not filled.

The City asserts its' position will bring compensation and benefits for its Dispatchers on a par with its pattern for Lakewood Paramedics, its two AFSCME bargaining units, as well as terms imposed upon non-union employees.

It asserts that it is inappropriate for the wages and benefits sought by independent bargaining units to be governed simply by the strength or weakness of the bargaining position of another bargaining unit. Nor can it be ignored that, because of the City's fiscal condition, Management offers a wage freeze for 2010; a wage freeze for 2011; and a 2% increase for 2012, as well as modest insurance premium contribution and benefit adjustments.

The Union strongly disagrees with the City positions.

In the interest of fairness to both parties, due consideration was given the evidence, positions presented, and, particularly:

Comparison of unresolved issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

The interest and welfare of the public, and the ability of the public employer to *currently* finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.

Accordingly, the following are RECOMMENDATIONS believed to be reasonable and fair: It is noted that as a result of negotiations the parties approved Tentative Agreements:

ARTICLE 10. GRIEVANCE PROCEDURE

RECOMMENDATION:

I FIND, upon due consideration of the parties' positions and the applicable criteria, I recommend approval of the tentative agreement as attached hereto to be incorporated into the collective bargaining agreement:

ARTICLE 15. EQUALIZATION OF OVERTIME

RECOMMENDATION:

I FIND, upon due consideration of the parties' positions and the applicable criteria, I recommend approval of the tentative agreement as attached hereto to be incorporated into the collective bargaining agreement.

ARTICLE 18 FMLA/ SICK LEAVE

The CITY's Proposal

Add following language to Article 18:

“Employees must apply for FMLA leave after three (3) days of consecutive non-work related or work related illness or injury, being hospitalized overnight or when a serious medical condition as defined by the FMLA law and regulations causes intermittent time off. Except as set forth in Sec.18.07, employees must utilize their sick leave and other paid time off during FMLA leave.”

The UNION counter-proposal:

Section 18.01: “Effective January 1, 2010, all employees shall earn sick leave at the rate of 4.6 hours for every eighty (80) hours actually worked and may accumulate such sick leave to an unlimited amount.”

Section 18.02: “add: or other accumulated paid time off.”

Section 18.04: reduce five (5) days to three (3) days

Maintain current contract language of Section 18.07 and the remainder of Article 18 Sick Leave.

RECOMMENDATION:

I FIND, upon due consideration of the parties’ positions and the applicable criteria, including, in part, the city’s financial plight, I recommend modification by adding the following language:

Article 18.02:

Employees must apply for FMLA regarding FMLA-qualifying events such as an absence of more than three (3) consecutive days due to non-work related or work related illness or injury, being hospitalized overnight or when a serious medical condition, as defined by FMLA law and regulations, causes intermittent time off. Except as set forth in Section 18.07, employees must utilize their sick leave and other paid time off during FMLA leave.

ARTICLE 26 WAGES

The UNION position:

Wage increases:

- 26.01 3 % wage increase commencing 3/1/10
- 26.02 3 % wage increase commencing 3/1/11
- 26.03 4 % wage increase commencing 3/1/12

In addition the Union proposes for LEADS proficiency, an increase from \$500 to \$750, and an increase from \$.75/per hour to \$1.00/per hour:

Section 26.04: Effective January 1, 2010, the City will provide a stipend of seven hundred fifty (\$750.00) dollars to al full-time employees covered by this Agreement for proficiency in “LEADS.” Additionally, effective January 1, 2010, the City will provide an additional \$1.00/per hour for LEADS proficiency, and the performance of Matron Duties.

The CITY proposal:

Wage increases:

26.01	wage freeze	3/1/10
26.02	wage freeze	3/1/11
26.03	2% increase commencing	3/1/12

RECOMMENDATION:

I FIND, upon due consideration of the parties’ positions and the applicable criteria including, in part, the city’s financial plight, comparables, a “me-too” provision in the city settlement Agreement with AFSCME, existing benefits, I recommend approval of the following wage schedule, to be incorporated into the Collective Bargaining Agreement:

26.01	EFFECTIVE MARCH 1, 2010	[no change, i.e. WAGE FREEZE]
26.02	EFFECTIVE MARCH 1, 2011	1% WAGE INCREASE
26.03	EFFECTIVE MARCH 1, 2012	2% WAGE INCREASE

ARTICLE 27. LONGEVITY

RECOMMENDATION:

I FIND, upon due consideration of the parties’ positions and the applicable criteria, including, in part, the city’s financial plight, I recommend modifying Section 27.01 by deleting any specific effective date, and by deleting the words “by separate check.”

ARTICLE 31 HOSPITALIZATION AND INSURANCE

The CITY proposal:

[See attached]

Premium contributions to apply to 90/10 plan

City granted right to eliminate 100% plan or retain discretion to set the premium contributions if it offers such a plan

Modify monthly premiums to 10% for family coverage and 13% for single coverage based on COBRA rates. Employee premium contributions to be capped at \$75/month for single coverage and \$125/month for family coverage.

Modify prescription co=pays as follows:

- \$10 for generic
- \$20 for name brand where generic unavailable
- \$35 for name brand where generic is available

The UNION position:

Maintain current contract language.

RECOMMENDATION:

I FIND, upon due consideration of the parties' positions and the applicable criteria, including, in part, the city's financial plight, comparables, a "me-too" provision in the city settlement Agreement with AFSCME, existing benefits, I recommend approval of the proposed language as attached hereto to be incorporated into the collective bargaining agreement as attached herein.

However, because dispatchers are not among the higher paid employees in the City and retroactive implementation would cause an undue hardship, I recommend that Section 31 of the collective bargaining agreement be modified to provide that the implementation date will be "OCTOBER 1, 2010."

ARTICLE 33 DURATION

RECOMMENDATION:

I FIND, upon due consideration of the parties' positions and the applicable criteria, including, in part, the city's financial plight, I recommend approval of the parties agreement that the negotiated agreement is to be effective for three (3) years.

ARTICLE 41. PERFECT ATTENDANCE

The CITY proposal:

- Eliminate for employees hired after August 1, 2010 [*As new Section 41.01*]
- Modify "on-the-job-injury" exception with following language changes:

41.01 All full-time employees covered under this contract who complete a calendar quarter (1/4) of a year with perfect attendance (January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 30), with no time absent for any reason whatsoever (excluding

time off as a direct result of an on-the-job injury, lasting no more than seven (7) eight-hour shifts (consecutive or intermittent) for each separate and distinct injury, shall be entitled to receive a bonus equal to twelve (12) hours of pay at her current rate of salary, for each calendar quarter (1/4) in which no absence is recorded provided that said twelve (12) hours of pay at the current rate of pay does not exceed \$250.00. Vacations, holidays, funeral leave, military leave, jury duty/witness leave and union leave shall not be counted as days absent.

41.02 All full-time, permanent employees covered under this contract who complete one (1) year (January 1st through December 31st) with no time absent for any reason whatsoever (excluding time off as a direct result of an on-the-job injury lasting no more than seven (7) eight-hour shifts (consecutive or intermittent) for each separate and distinct injury, shall be entitled to an additional personal day off during the following year.

[Change Section 41.01 to be numbered Section 41.02]

[Change Section 41.02 to be numbered Section 41.03]

The UNION position:

Maintain the current contract language.

RECOMMENDATION:

I FIND, upon due consideration of the parties' positions and the applicable criteria, including, in part, the city's financial plight, I recommend approval of the following modification of Article 41, to be incorporated into the Collective Bargaining Agreement:

“Section 41.01

This Article shall not apply to employees hired after August 1, 2010.”

“Section 41.02

All full-time employees covered under this contract, who complete a calendar quarter (1/4) of a year with perfect attendance (January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 30) with no time absent for any reason whatsoever* (excluding time off as a direct result of an on-the-job injury lasting no more than seven (7) eight-hour shifts (consecutive or intermittent) for each separate and distinct injury), shall be entitled to receive a bonus equal to twelve (12) hours of pay at (*his or*) her current rate of salary, for each calendar quarter (1/4) in which no absence is recorded, provided that said twelve (12) hours of pay at the current rate does not exceed \$250.00. Vacations, holidays, funeral leave, military leave, jury duty/witness leave and union leave shall not be counted as days absent. However, employees who take time off as a result of a serious injury, suffered as a result of a physical altercation with an

inmate, shall maintain eligibility during the initial eighteen (18) month period of treatment for each separate and distinct serious injury.”

*Note: prior Agreement language deleted, i.e.:

“during the initial eighteen (18) month period of treatment”

Section 41.03 All full-time, permanent employees covered under this contract who complete one (1) year (January 1st through December 31st) with no time absent for any reason whatsoever (excluding time off as a direct result of an on-the-job injury, lasting no more than seven (7) eight-hour shifts (consecutive or intermittent) for each separate and distinct injury), shall be entitled to an additional personal day off during the following year. However, employees who take time off as a result of a serious injury, suffered as a result of a physical altercation with an inmate, shall maintain eligibility during the initial eighteen (18) month period of treatment for each separate and distinct serious injury.”

ALAN M.WOLK, J.D.
Fact-Finder

ISSUED in Cuyahoga County, Ohio,
as of the 14th day of SEPTEMBER, 2010.

APPENDIX

JX A Past collective bargaining agreement

City Exhibits 1-25 [booklet]

ARTICLE 10

ARTICLE 15

ARTICLE 31

Attendance:

Union:

Lucy DiNardo FOP/PLC Staff Representative
Christine Sykora Dispatcher Union Representative
Jaime Kappa Dispatch

City:

Jon Dileo,	Counsel
Nora L. Hurley	Law Director
Melisa Mazanec	Law Clerk
Jean Yousefi	HR Director
Tim Malley	Police Chief