

Date of Hearing: December 9, 2009

Representing the Employer:

Principal:

Dwight A. Washington
Cooper, Gentile & Washington

Others:

Chief Mark Brownfield, Director of Police
Barbara McCormick, Director of Personnel

Representing the Employees:

Principal:

Mark Volcheck
Ohio Patrolmen's Benevolent Association (OPBA) Attorney

Other:

Corey M. Follick

Fact Finder:

Raymond J. Navarre

The hearing was held at the City Office Building and started at approximately 9:30 am and concluded at approximately 12:30 pm.

At the beginning of the hearing the participants agreed to be sworn and were sworn.

Note that for purposes of identification in this document, the representatives of the City of Englewood will be referred to as the Employer and Ohio Patrolmen's Benevolent Association (OPBA) and representatives, will be referred to as the Union.

BACKGROUND

SERB CASE No.: 09-MED-09-0971 involves the full-time police officers of the city of Englewood and there are approximately fifteen (15) officers in the bargaining unit.

The Employer and the Union began negotiations in November of 2009. The parties met approximately three (3) times on November 6, 12, and 16, including one (1) mediation session. In the mediation session on November 16, 2009 John Gray served as Mediator and despite his efforts the parties were unable to reach agreement on any issue.

The current collective bargaining agreement is in effect from January 1, 2007 through December 31, 2009.

Also, the Employer refused to sign an R.C. 4117.14(G)(11) waiver. Therefore, the SERB timelines have not been waived for the issuance of the fact finder's report and recommendations.

The issue of further negotiating was discussed and the parties involved saw no reason for any further negotiations. However, at times during the session, one or both parties asked for time to talk separate from the session. This request was granted when made.

Two Unfair Labor Practices (ULP) have been filed with SERB and have not been heard as of this date. These ULPs do not affect the fact finding as such at this time and are not considered in these proceedings.

FACT FINDING CRITERIA

In determining the facts and making the recommendations contained in this document, the Fact-finder considered the applicable criteria as required by the Ohio Revised Code Section 4117.14 and the Ohio Administrative Code Section 4117-9-05. These criteria are:

- (1) Past collectively bargained agreements, if any between the parties;
- (2) Comparison of 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 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 agreed-upon dispute settlement procedures in the public service or in private employment.

ADDITIONAL CRITERIA

In addition to the criteria listed above, the Fact Finder will use the Comparables, if submitted, by the parties, their position statements, background materials presented, as well as historical and chronological events that have implications in respect to the issues being considered.

At this point a list of the unresolved issues was drawn up noting the party or parties involved.

The list follows.

UNRESOLVED ISSUES

ARTICLE V RECOGNITION OF UNION

Submitted by the Union

ARTICLE X SENIORITY

Submitted by the Union

ARTICLE XIV WAGES

Submitted by the Employer and Union

ARTICLE XV GRIEVANCE PROCEDURE

Submitted by the Employer and withdrawn during the session

ARTICLE XVI ARBITRATION

Submitted by the Employer and withdrawn during the session.

ARTICLE XVII VACATION LEAVE

Submitted by the Employer

ARTICLE XVIII SICK LEAVE

Submitted by the Union

ARTICLE XX HOLIDAYS

Submitted by the Employer and Union

ARTICLE XXI HEALTH INSURANCE

Submitted by the Employer and the Union

ARTICLE XXVII OVERTIME

Submitted by the Employer and the Union

ARTICLE XXXII DURATION OF AGREEMENT

Submitted by the Employer and the Union

As noted above, during the session the Employer withdrew **ARTICLE XV, GRIEVANCE PROCEDURE** and **ARTICLE XVI, ARBITRATION**.

UNRESOLVED ISSUE NUMBER ONE

ARTICLE V RECOGNITION OF UNION

The Union proposes to add an additional paragraph D to Article V. This sets out a fair share provision conforming to Section 4117.09 of the Ohio Revised Code for employees who do not wish to join the Union. In the Union's opinion this is a common sense provision found across Ohio and this paragraph should be as follows:

All members of the bargaining unit, as identified in this Article shall either (1) maintain their membership in the OPBA, (2) become members of the OPBA, or (3) pay a service fee to the OPBA in an amount set by the OPBA and not to exceed the monthly dues for membership in the OPBA, as a condition of employment, all in accordance with Ohio Revised Code Section 4117.09. In the event that a service fee is to be charged to a

member of the bargaining unit, the Employer shall deduct such fee and pay such fee to the Union in the same manner as dues are deducted and paid as specified in this Article. The Union agrees to hold the Management harmless for all payments made to the Union pursuant to this paragraph.

The Employer sees no reason for this addition to the article since at the present time all members are paying the dues.

The Fact Finder, considering the criteria listed above, the arguments present by both parties, and conforming to ORC 4117.09, makes the following recommendation.

RECOMMENDATION

Paragraph D is to be added to Article V, Section 3, which is as follows:

All members of the bargaining unit, as identified in this Article shall either (1) maintain their membership in the OPBA, (2) become members of the OPBA, or (3) pay a service fee to the OPBA in an amount set by the OPBA and not to exceed the monthly dues for membership in the OPBA, as a condition of employment, all in accordance with Ohio Revised Code Section 4117.09. In the event that a service fee is to be charged to a member of the bargaining unit, the Employer shall deduct such fee and pay such fee to the Union in the same manner as dues are deducted and paid as specified in this Article. The Union agrees to hold the Management harmless for all payments made to the Union pursuant to this paragraph.

UNRESOLVED ISSUE NUMBER TWO

ARTICLE X SENIORITY

In Section 3 of Article XV, the Union proposes to replace the section with the following:

Section 3. Layoff. Employees may be laid off as a result of:

- 1) a lack of work
- 2) a lack of funds; or
- 3) an abolishment of a bargaining unit position that is made for any one or any combination of the following reasons: as a result of a reorganization for the efficient operation of the appointing authority, for reasons of economy or for lack of work.

Whenever layoffs are made, they shall be made in the following order of placement categories: first, temporary, then part-time probationary, then part-time permanent, then full-time probationary, then full-time permanent. Bargaining unit employees shall be laid off on the basis of the inverse order of classification seniority.

Seniority continued

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The Union's proposal establishes causes for a layoff as well as prioritization. The Employer proposes current language.

The Employer felt that as to the causes for layoffs proposed by the Union there was "cherry picking". The Employer had issue concerning classifications not in the bargaining unit and management rights in respect to layoffs.

Considering the arguments presented by both parties, the criteria to be used in Fact Finding, and in particular the issue of management rights, the Fact Finder makes the following recommendation.

RECOMMENDATION

ARTICLE X, SENIORITY, shall remain as in the current bargaining contract without changes to Section 3.

UNRESOLVED ISSUE NUMBER THREE

ARTICLE XIV WAGES

The Union proposes across-the-board increases of three percent (3%) or the first year of the contract, three and one-half percent (3 1/2%) the second and third year of the agreement.

The Employer proposes a zero percent increase for the year 2010. The Employer proposes a one-year contract.

The Union supplied comparables from the SERB Annual Wage Settlement Report (Exhibit 7) for the years 1999 through 2008 to support their proposal. In the year 2007, the wage increases went from 2.68 % to 3.32%. In the year 2008, the increases went from 2.70% to 3.16%. The statewide increases in 2007 were 2.98% and in 2008 2.92%.

Exhibit 8 contained the history of wage increases for Englewood Police Officers from 1994 through 2009. During that period the increases averaged 3.78%.

Exhibit 9 provided comparison for ten year employees with other communities in the area.

The Employer provided an OPBA pay increase history from 2004 through 2009. Each year the pay increase was 3.5% except for 2009 when the increase was 3.0%. In addition they provided a list of all the Englewood Police Officers with years of service, Pay Step and annual pay.

The Employer supplied a list of wages for 2009 of comparable departments and the average wage.

The Employer included material on the Consumer Price Index – October 2009.

The Union's position is that their proposal is modest, supported by relevant data and their bargaining history, and comparable average increases. It is to be noted that the Employer does not say it is unable to pay the increases but rather that it has been responsible in the use of city funds, has been careful in use of revenues and concerned about the financial future. It was announced by the Employer's representative that the Englewood City Council met last evening to freeze wages.

The Fact Finder understands both parties and their positions. The financial future for any governments and organizations is certainly filled with uncertainties. However, families and employees face many of the same issues and uncertainties but must be able to address the issues. It seems to the Fact Finder there needs to be give and take by both parties, especially in the area of finances. The Fact Finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the positions of both parties, and the arguments presented by the parties, the Fact Finder's recommendation is that the Englewood Police Officers receive a wage increase of two percent (2%) on January 1, 2010, two and one-half percent (2 ½%) on January 1, 2011, and three percent (3.0 %) on January 1, 2012.

UNRESOLVED ISSUE NUMBER FOUR ARTICLE XVII VACATION LEAVE

The Union proposes current contract language for Article XVII.

The Employer proposed the elimination of the use of "demand" days, which caused scheduling and management problems..

The Union states that the Employer has offered no legitimate reason for the elimination of "demand" days. The Employer says there have been abuses when a day off was requested but not given. The officer would then request a demand day.

In addition to the three (3) personal leave days granted to each employee on his/her anniversary date, employees can earn an additional personal leave day for nominal use of sick leave as follows: 0-2 total days of sick leave used in the prior twelve months, as of the employee's anniversary date, and no more than two (2) occurrences = one (1) additional day of personal leave awarded.

Considering the discussion, the material presented by both parties and the criteria for fact finding, the Fact Finder makes the following recommendation.

RECOMMENDATION

The Fact Finder recommends that Section 2. of Article XVII, Vacation Leave be replaced with:

In addition to the three (3) personal leave days granted to each employee on his/her anniversary date, employees can earn an additional personal leave day for nominal use of sick leave as follows: 0-2 total days of sick leave used in the prior twelve months, as of the employee's anniversary date, and no more than two (2) occurrences = one (1) additional day of personal leave awarded.

UNRESOLVED ISSUE NUMBER FIVE

ARTICLE XVIII SICK LEAVE

The Union proposes to add paragraphs D and E in Section 1. The proposal adds to the reasons bargaining unit employees may use sick leave. The proposal permits such usage for employee's spouse, children, step-children and parents. The Union says its proposal is basic to common uses for sick leave in the area and across the state for public employees and police officers.

The Employer's proposal is the language of the current bargaining contract.

The Union's proposal is two additional paragraphs, **D** and **E** in Section 1. The language for the paragraphs is as follows.

- D.** In case of illness, injury, childbirth or exposure to a contagious disease of an employee's spouse, child, step-child or parent where the employee's presence is reasonably necessary for the health and/or welfare of the affected family member; and
- E.** For medical, dental or optical examination or treatment of an employee's spouse, child, step-child or parent where the employee's presence is reasonably necessary. (Such leave shall be limited to the actual hours necessary for such medical, dental or optical examination or treatment, including reasonable travel time.)

The Union presented Exhibits to show wide spread sick leave usage for family members in comparable jurisdictions and sick leave usage in the state's civil service situations.

The Employer asks how the units in the exhibit got these benefits, the wide spread sick leave usage. Were they negotiated? The Employer also felt that the language was very subjective in paragraphs D. and E.

The Fact Finder did not feel compelled to recommend the Union's proposal by the arguments presented. Also there is always a need for balance in the recommendations made. In addition to these two considerations, taking into account the criteria listed above for Fact Finding, the Fact Finder makes the following recommendation.

RECOMMENDATION

The Fact Finder recommends that the language of **ARTICLE XVIII, SICK LEAVE** be the same as in the current collective bargaining agreement without changes.

UNRESOLVED ISSUE NUMBER SIX

ARTICLE XX HOLIDAYS

Each party had proposals for this article. However, both parties withdrew their proposals and went back to the language of the current bargaining agreement. The Fact Finder makes the following recommendation.

RECOMMENDATION

The Fact Finder recommends that the language for **ARTICLE XX** be the same as in the current bargaining agreement without changes.

UNRESOLVED ISSUE NUMBER SEVEN

ARTICLE XXI HEALTH INSURANCE

The Union proposes the following for **ARTICLE XXI, HEALTH INSURANCE**. SECTION 1. The City shall provide Health Care Insurance and Dental Insurance for employees and their families. The coverages of such plans shall be as described in this Article and shall be uniform for all non-exempt employees of the City.

The City shall contribute 90% of the applicable monthly cost (premium) for family or single coverage for any employee enrolling in Dental Insurance. The enrolling employee shall contribute via payroll deduction, 10% of such monthly applicable cost (premium).

The City shall provide two options for Health Care Insurance for employees and their families: Traditional Health Care Insurance (including PPO) and Health Care Insurance in conjunction with a Health Savings Account (HSA Health Care Insurance). For traditional Health Care Insurance, the City shall contribute 90% of the applicable monthly cost (premium) for the family or single coverage. The enrolling employee shall contribute via payroll deduction, 10% of such monthly applicable cost (premium).

For HSA Health Care Insurance, the City shall pay 100% of the applicable cost (premium).

Any and all references to coverage(s) or benefit(s) in this article are synonymous, include the other, and include employee costs thereunder.

Section 4. Change of Provider(s). The provider, if any, for the coverage(s) provided in this Article shall be at the choice of the City provided that coverage changes shall not be altered except through negotiations with the Union. The coverages identified herein shall not be diminished for employees except with Union approval. If a change occurs in the Provider, the Union shall be notified of any change in the delivery of coverage hereunder at least thirty (30) days prior to the effective date of any such change.

Coverages under the Dental Insurance plan shall be equal to or better than those provided in the dental plan identified in Exhibit A, attached hereto and incorporated herein.

Coverages under the Traditional Health Care Insurance plan shall be equal to or better than those provided in the Blue Access 3.0 Option 19 Rx H plan, attached hereto as Exhibit B and incorporated herein.

Coverages under the HSA Health Care Insurance plan shall be equal to or better than those provided in the Lumenos HSA Option 8 plan, attached hereto as Exhibit B and incorporated herein. For the HSA Health Care Insurance plan, the Employer contribution toward the deductible referenced in Exhibit B shall be paid annually in equal quarterly installments to the employee's HSA account, without any payroll withholding taxation. The first quarterly installment shall be paid within two weeks of the first day of the plan year. Such annual payment shall not be less than \$1,500.00 for singles or \$3,000.00 for families, or equal to 60% of the plan's out-of-pocket limit, whichever is greater. The City shall pay the initial set-up costs incurred related to each employee's HSA account. All ongoing administrative costs will be paid by the employee regarding his/her HSA account.

The Employer proposes to change the contributions for the insurance to 15% for the employees and 85% for the Employer. In the present agreement, the employee's contribution is 10% and the Employer is 90%.

In addition, the Employer would delete Section 4. and replace it with the following:

All full time employees may enroll in the City's Health Care Plan when they begin their probationary period. The content of the health insurance benefits package and employee premiums will be consistent with that provided to employees in the Administrative office, including any changes in benefits and employee contribution.

To quote the Union: “The OPBA’s proposed change in the first paragraph of Section 4 is merely clarification to avert future disputes. As explained above, Section 4 currently requires that coverage change(s) provided under the article cannot be made except through negotiations with the Union. Such requires Union approval and agreement with any changes. This issue has been arbitrated and such was found by an arbitrator. The remaining proposed changes in Section 4 identify the current and negotiated Dental and Health Care Insurance plans in effect and the present coverages. Such specifies that coverages shall be equal to or better than those presently offered. This merely memorializes the effect of the substance of the article and section. Additionally, the OPBA added annual contribution requirements for the City for those enrolled in the HSA. Such reflects the present contribution levels and practice of the parties arrived at through mid-term negotiations. The OPBA’s proposal reflects the status of the parties relative to their negotiations and serves to avert any further mid-term disputes”.

Basically the Union is proposing to maintain the present situation as to Health Insurance and Dental Insurance.

There were no discussions of abuses as to the insurance and use of it. There were arguments presented to suggest a change in the Health Care and Dental Insurance. The Employer has proposed a change in the contribution rates; Employer at 85% and Union at 15% for the traditional plans. For HSA plan, the Employer presently pays 100% of the applicable cost.

Today, everyone is aware of all aspects of healthcare insurance. Costs have increased with regularity and probably will continue. Employees’ health care insurance is a large item for employers. It is a very important item for the employees and their families. The plans that have been negotiated and survived arbitration seem to be good. However, the Fact Finder recommends that the contribution for the traditional plans be raised to 15% for the employees and 85% for the employer.

RECOMMENDATION

The Fact Finder makes the following recommendation. The Union proposal for ARTICLE XXI, HEALTH INSURANCE shall be the language of the article with the exception of the contribution rate in Section 1. The City shall contribute 85% of the applicable monthly cost for family and single coverage for any enrolling employee and the employee contributes 15% via payroll deduction. The language of ARTICLE XXI shall be as follows:

ARTICLE XXI HEALTH INSURANCE

SECTION 1. The City shall provide Health Care Insurance and Dental Insurance for employees and their families. The coverages of such plans shall be as described in this Article and shall be uniform for all non-exempt employees of the City.

The City shall contribute 85% of the applicable monthly cost (premium) for family or single coverage for any employee enrolling in Dental Insurance. The enrolling employee shall contribute via payroll deduction, 15% of such monthly applicable cost (premium).

The City shall provide two options for Health Care Insurance for employees and their families: Traditional Health Care Insurance (including PPO) and Health Care Insurance in conjunction with a Health Savings Account (HSA Health Care Insurance). For traditional Health Care Insurance, the City shall contribute 90% of the applicable monthly cost (premium) for the family or single coverage. The enrolling employee shall contribute via payroll deduction, 10% of such monthly applicable cost (premium).

For HSA Health Care Insurance, the City shall pay 100% of the applicable cost (premium).

Any and all references to coverage(s) or benefit(s) in this article are synonymous, include the other, and include employee costs thereunder.

Section 2. The language of the current bargaining agreement.

Section 3. The language of the current bargaining agreement.

Section 4. Change of Provider(s). The provider, if any, for the coverage(s) provided in this Article shall be at the choice of the City provided that coverage changes shall not be altered except through negotiations with the Union. The coverages identified herein shall not be diminished for employees except with Union approval. If a change occurs in the Provider, the Union shall be notified of any change in the delivery of coverage hereunder at least thirty (30) days prior to the effective date of any such change.

Coverages under the Dental Insurance plan shall be equal to or better than those provided in the dental plan identified in Exhibit A, attached hereto and incorporated herein.

Coverages under the Traditional Health Care Insurance plan shall be equal to or better than those provided in the Blue Access 3.0 Option 19 Rx H plan, attached hereto as Exhibit B and incorporated herein.

Coverages under the HSA Health Care Insurance plan shall be equal to or better than those provided in the Lumenos HSA Option 8 plan, attached hereto as Exhibit B and

incorporated herein. For the HSA Health Care Insurance plan, the Employer contribution toward the deductible referenced in Exhibit B shall be paid annually in equal quarterly installments to the employee's HSA account, without any payroll withholding taxation.

The first quarterly installment shall be paid within two weeks of the first day of the plan year. Such annual payment shall not be less than \$1,500.00 for singles or \$3,000.00 for families, or equal to 60% of the plan's out-of-pocket limit, whichever is greater. The City shall pay the initial set-up costs incurred related to each employee's HSA account. All ongoing administrative costs will be paid by the employee regarding his/her HSA account.

Section 5. The language of the current bargaining agreement

UNRESOLVED ISSUE EIGHT

ARTICLE XXVII OVERTIME

The Union proposes to add a section to the present language of the current collective bargaining agreement address the issue of compensatory time. This section, Section 7. is as follows:

In lieu of being paid time and one-half in Section 1, an employee may elect to be paid in compensatory time. Where elected by the employee, compensatory time shall be paid at the rate of one and one-half (1.5) hour off with pay at the regular hourly rate for each hour of overtime per Section 1. Each employee shall be able to accrue an unlimited amount of compensatory time except that an employee may not hold any more than forty (40) hours of compensatory time at any one time. An employee may elect one time per year to be paid any amount of hours of his banked compensatory time. Such notice shall be given by November 15 of each year and paid to the employee before December 10.

Compensatory time shall be paid at the employee's regular rate of pay at the time of purchase. Employees shall not be required to liquidate or use any of their compensatory time. Compensatory time off shall be scheduled at the request of the employee and shall not be unreasonably denied.

The Employer proposes that overtime will be in pay only.

Any contract needs to be taken as whole, especially as to economic and financial issues. The Union proposal would require the Employer to carry compensatory time as a liability and it could be earned at one rate of pay but paid at a higher rate. However, the Employer has been allowing this practice but it is not part of the current collective bargaining agreement between the parities.

The Fact Finder feels that no strong arguments for or against the proposals that were presented by either party and therefore makes the following recommendation.

