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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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2010 OCT -5 P

In the Matter of Fact-Finding between:

The City of Bowling Green, Ohio	:	Case No. 10-MED-03-0370
and	:	Recommendations
The Bowling Green Patrolmen's Benevolent Association	:	Margaret Nancy Johnson Fact-finder

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Statement of the Case

This matter came on for hearing on October 1, 2010, in a conference room of the Police Headquarters in Bowling Green, Ohio. Marilyn L. Widman, Attorney in the law firm of Allotta, Farley, Widman represented the Bowling Green Patrolmen's Benevolent Association, an affiliate of the Ohio Patrolmen's Benevolent Association, hereinafter "Union" or "OPBA." David O'Connell, Attorney with Marshall & Melhorn, argued the case on behalf of Bowling Green, hereinafter "City."

The City and the Union are parties to a Collective Bargaining Agreement having an expiration date of June 17, 2011. Unit A covered by the Agreement consists of all full-time sworn Police Officers below the rank of Sergeant. All full-time and part time Dispatchers, Parking Services Technicians and Animal Control Officers are included within Unit B. A wage re-opener for the final year of the contract, the issue currently in dispute, is set forth in Article 42 of the Agreement.

Through the process of bargaining, in early July, 2010, the parties had reached a tentative agreement for the wage re-opener which included step increases for eligible employees effective July 26, 2010 and a 2% increase for those employees who had reached the top pay steps. When the Union realized that four employees would receive neither a step increase nor a wage increase, the matter was brought up with the City. As the City believed that a tentative agreement had been reached, it declined to address the issue of the four employees who would receive no wage adjustment.

Thereafter, Union membership rejected the tentative agreement. Unable to resolve the dispute, the parties scheduled fact-finding before Margaret Nancy Johnson, selected by the parties and appointed by the State Employment Relations Board, hereinafter "SERB," to hear evidence and argument on the issue in contention. The parties stipulated that the matter is properly before the fact-finder for the issuance of recommendations and that she has statutory jurisdiction to do so.

Issue

The sole issue now before the fact-finder is the wage re-opener for the final year of the Collective Bargaining Agreement between the parties.

Position of the Parties

Recognizing that an error had been made in the tentative agreement reached by the parties, the City now seeks to rectify the tentative agreement previously negotiated by providing a 2% increase for those employees who will not receive a step increase, retroactive to July 26, 2010. Because the Union claims its members have lost some value in the intervening months by the failure of the City to take corrective

action as soon as the mistake was noted and brought to the attention of the City, the Union proposes some additional compensation for the bargaining unit.

One point of contention appears to be the effective date for the wage adjustments. Considering the general discomfort of the populace with fiscal management by governmental entities, the City expressed some concern about its ability to enact a monetary issue on the ballot for its voter this November and endeavors to have any increases for this unit to be consistent with those reached by other units in the City.

Statutory Criteria

Consistent with statutory requirements, the fact-finder has taken into account:

- (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 stipulation 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 procedure in the public service or in private employment.

Discussion

While the Fact-finder agrees that delay in addressing those employees who would receive neither a step increase nor a wage increase for the final year of the contract is unfortunate, she cannot concur that this error justifies a monetary enhancement of terms previously agreed upon by the bargaining committees. The terms negotiated by the parties were comparable to agreements reached by the City with other units with which it collectively bargains. Moreover, the increases were consistent with statutory criteria including the ability of the City to finance the agreed upon increases.

Except that a fact-finder may render recommendations making wage increases retroactive, nothing in the Collective Bargaining Act authorizes a neutral hearing officer to compensate a bargaining unit for delays encountered in the process of negotiations. Accordingly, the fact-finder recommends that the tentative Agreement be modified only to the extent of providing a wage increase for those employees not receiving step increases, the coverage omitted in the July, 2010 tentative agreement.

Recommendations

The Fact-finder recommends that the following language be added to the Agreement as Section 42.11:

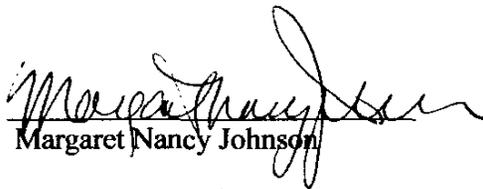
As a result of the re-opener on wages identified in 42.10 above, effective July 26, 2010, all persons eligible per sections 42.4 and 42.5 for step increases shall receive them retroactive to July 26, 2010.

Any bargaining unit member who is not eligible for a step increase shall receive a two percent (2%) increase to his/her current step retroactive to

receive a two percent (2%) increase to his/her current step retroactive to July 26, 2010.

The highest two steps of each classification set forth in Section 42.4 shall be increased two percent (2%).

Respectfully submitted,



Margaret Nancy Johnson

A Report of these Recommendations has been issued this 4th day of October, 2010, by email and facsimile to Marilyn L. Widman, Esq., Mwidman@afwlaw.com, 419-535-1935 and David O'Connell, Esq. at Oconnell@marshall-melhorn.com, 419-249-7151; by Express mail to Marilyn Widman, Esq., Allotta, Farley, Widman, 2222 Centennial Road, Toledo, Ohio 43617 and to David O'Connell, Esq. Marshall and Melhorn, Four Seagate, Toledo, Ohio 43604; and by regular mail to J. Russell Keith, General Counsel and Assistant Executive Director, State Employment Relations board, 65 East State Street, Columbus, Ohio 43215

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October 4, 2010

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Re: 10-MED-03-0370
The City of Bowling Green
and
Bowling Green Patrolmen's Association

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Dear Ms. Widman, Mr. O'Connell and Mr. Keith:

Enclosed please find a copy of the Recommendations of the Fact-Finder in the above referenced matter. Also enclosed for the parties is a copy of an Invoice for Services rendered.

Thank you for the opportunity to be of service.

Very truly yours,



Margaret Nancy Johnson

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