

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

2010 MAR 12 A 10:14

OHIO PATROLMEN'S BENEVOLENT ASSOC.)	CASE NO.: 09-MED-10-1229
PEPPER PIKE PATROL AND SERGEANTS)	09-MED-10-1230
)	
UNION,)	FACT-FINDER:
)	JOSEPH W. GARDNER
And)	
)	
CITY OF PEPPER PIKE)	
)	
EMPLOYER.)	
)	

**POSITION STATEMENT OF THE
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION**

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I. BACKGROUND.

Now comes the Ohio Patrolmen's Benevolent Association on behalf of the Pepper Pike Full-Time Patrol Officers and Sergeants (herein collectively "Union") and in accordance with Ohio Revised Code 4117.14 and submits the following position statement of the Union. The collective bargaining unit at issue consists of thirteen (13) full-time Patrol Officers and six (6) full-time Sergeants of the City of Pepper Pike Police Department.

The Collective Bargaining Agreement (herein "CBA") between the City and the Union expired on December 31, 2009 and was for the term January 1, 2008 through December 31, 2009. A copy of the CBA is attached hereto. The Union agrees that all provisions of the CBA not specifically addressed herein shall remain current contract language.

The parties met on several occasion prior to fact-finding and were unable to reach resolution on the issues presented for review.

The Union submits the following issues to the fact-finder:

Article XI – Vacations.

Article XIX – Wages.

Article XXI – Medical Insurance.

New Article – Specialty/First Responder Compensation.

It is anticipated that the City will submit the following issues to the fact-finder:

Article XIX – Wages.

Article XX – Hours of Work.

Article XXI – Medical Insurance.

II. UNION POSITION STATEMENT

a. VACATIONS.

The Union proposes two modifications of the vacation benefit. The first part consists of eliminating the fractional accrual of vacation based on months of work per year. The second part consists of an increase in the employees' accrual of vacation based on each employee's years of service.

Currently, employees who have worked 1 to 5 years of continuous employment receive one (1) day of vacation for each month worked up to a maximum of ten (10) days of vacation; employees who have worked 6 to 12 years of continuous employment receive one and one-half (1 ½) days of vacation for each month worked up to a maximum of fifteen (15) days of vacation; employees who have worked 13 to 18 years of continuous employment receive one and two-thirds (1 2/3) days of vacation for each month worked up to a maximum of twenty (20) days of vacation; and employees who have worked more than 18 years of continuous employment receive two and one-half (2 ½) days of vacation for each month worked up to a maximum of twenty-five (25) days of vacation. The Union proposes to eliminate the 1, 1 ½, 1 2/3 and 2 ½ days monthly accrual in favor of a set yearly accrual based on years of service.

Additionally, the Union proposes to reduce the years of continuous service necessary to advance to the next accrual step. The proposal would allow employees to advance to the next step for each five years of service. After twenty years of service, an employee could accrue one additional vacation day per year up to a maximum of thirty days. The Union proposes the following:

Article XII - Vacations

Section 1: Current Contract Language.

Section 2: Employees shall earn vacation leave to be taken during the calendar year after it is earned as follows:

- a. From the date of employment to December 31 of the calendar year in which the employment commenced ("the Employment Year"), and to the end of the fifth (5th) calendar year of continuous employment ~~after the Employment year, one (1) day for each month worked up to a maximum of ten (10) days of vacation.~~
- b. From the end of the fifth (5th) calendar year to the end of the ~~twelfth (12th)~~ **tenth (10th)** calendar year of continuous employment ~~after the Employment Year, one and one-half (1-1/2) days for each month worked up to a maximum of fifteen (15) days of vacation.~~
- c. From the end of the ~~twelfth (12th)~~ **tenth (10th)** calendar year to the end of the ~~eighteenth (18th)~~ **fifteenth (15th)** calendar year of continuous employment ~~after the Employment Year, one and two-thirds (1-2/3) days for each month worked up to a maximum of twenty (20) days of vacation.~~
- d. From the end of the ~~eighteenth (18th)~~ **fifteenth (15th)** calendar year ~~to the end of the twentieth (20th) year of continuous employment after the Employment Year, two and one-half (2-1/2) days for each month worked up to a maximum of twenty-five (25) days of vacation.~~
- e. From the end of the twentieth (20th) calendar year of continuous employment, twenty-five (25) days plus one additional day of vacation for each year up to a maximum of thirty (30) days of vacation.**

~~The accrual of one (1), one and one-half (1-1/2), one and two-thirds or two and one-half (2-1/2) days per month of vacation benefit is only applicable to pro-rata vacation for employees who quit under the terms of section 4 below. In no event shall the accrual exceed the number of days (10, 15, 20, 25) that may be taken in the year of vacation benefit.~~

Section 3: Current Contract Language.

Section 4: Vacation leave cannot be accumulated. It must be taken during the first twelve (12) months following the anniversary year in which the vacation is earned; otherwise any balance is forfeited **unless the Employer restricts the employee's requested use of vacation leave.** If an employee is discharged for cause, vacation pay shall be forfeited. If an employee voluntarily terminates employment or quits after giving thirty (30) days notice, or dies or becomes permanently disabled, he or she shall receive the vacation pay he or she has accumulated or is entitled to receive. If the employee fails to give such notice all accumulated vacation pay shall be forfeited.

Section 5: Current contract language.

b. WAGES.

Per Article XIX of the current CBA, Pepper Pike Patrol Officers and Sergeants receive a base wage rate and additional compensation based on years of service or "longevity." Per the terms of the CBA, the Patrol Officers' base wages are determined by reference to a four (4) step wage scale. The 2009 top wage rate for a Pepper Pike Patrol Officer was \$67,309. Sergeants receive one rate of pay upon appointment. The 2009 wage rate for a Pepper Pike Sergeant was \$76,059. Per Article XIX, section 2, employees also receive longevity pay starting after five (5) years of service. Employees receive additional compensation based on four (4) different categories; for years 5 through 9, employees receive 2% of base wages; for years 10 through 14, employees receive 3% of base wages; for years 15 through 19, employees receive 4% of base wages; and for service of 20 years or more, employees receive 6% of base wages.

The Union first contends that the City unilaterally and in violation of the collective bargaining agreement modified the employees' pay rates for 2010 resulting in the loss of 3.85% of base wages. The Union has a pending grievance concerning the City's alleged violation. In December 2009, the City notified employees that the City was reducing the employees' hourly rates of pay as a result of the employees receiving 27 pays rather than 26 pays in 2010. The City noted that because employees were scheduled to receive a paycheck on January 1, 2010 and on December 31, 2010, the employees receive 27 pays in 2010. The City theorized that, effective the first pay in 2010, the City would divide the employees' annual wage by 27 pay periods thereby resulting in the calculation for each biweekly pay period. The City maintained that the modification would not result in a salary reduction for 2010. For a Class A Patrol Officer, the City's modification reduced the employee's biweekly pay from \$2,588.81 to \$2,492.93.

The Union disagrees with the City position and asserts that any pay agreement for 2010 must be based on the contractual calculation of annual wages. Per the CBA, the employees'

annual wage is contemplated on a yearly work schedule of 2,080 hours. Employees are paid hourly for all hours worked. Thus, the City must divide the annual wage by 2,080 hours to arrive at the employees' hourly rate of pay. It is undisputed that there are 52 weeks in calendar year 2010. Employees will work 2,080 hours in 2010. By the City's calculation, Class A Officers receive only \$64,816.07 or 3.85% less for their annual wage. The discrepancy occurs because the City credits wages from the January 1, 2010 paycheck to the 2010 annual wage even though those hours were worked and earned in 2009. Because the City delays by one week the issuance of pay checks, they assert that this resulted in 27 pays in 2010; however, the City misconstrues paychecks with pay periods. The City must return the employees' pay calculation to the contractual base annual wage in effect in 2009.

During the preceding negotiations, the Union agreed to freeze the annual wage scale for 2010 at the same level as 2009. The Union would reassert this proposal. The Union also seeks wage increases subject to re-negotiation for years 2011 and 2012.

It is anticipated that the City is seeking a permanent wage reduction of between ten percent (10%) and fifteen percent (15%) in 2010 alone. It is also anticipated that the City will seek a roll back of the longevity pay. The Union believes the City position is arbitrary, unreasonable and not supported by the facts. The City has a very difficult burden to show an "inability to pay" rather than choosing not to pay comparative wages. The City's wage proposal, in combination with the proposed reduction in hours or furloughs as noted in Section (e) below, would result in an overall wage reduction of twenty-five percent (25%) per employee. A twenty-five percent wage reduction would place the Pepper Pike Patrol Officer last in all external comparables for Cuyahoga County. For purposes of internal comparables, the average Pepper Pike Fire Fighter makes \$15,000 more per year than the average Pepper Pike Patrol Officer.

The City has maintained a one percent (1%) municipal income tax rate since 1971. The City also permits a credit up to one percent (1%) for residents who work in another community and pay the withholding in that community. Despite these comparatively low levels, the City has maintained fairly consistent municipal income tax revenue of \$3.7 million in 2006, \$4.072 million in 2007, \$4.228 million in 2008, and \$3.967 million in 2009. The property tax revenue has exceeded the budget in all years. Overall, the General Fund Revenue for 2009 exceeded the budget by \$254,800 and all funds revenue exceeded the budget for 2009 by \$4.5 million. In 2009, the City budgeted General Fund expenditures of \$11,088,514 but only realized expenses of \$10,641,282; a savings of \$447,000.

Since 2007, the City has routinely budgeted excessive General Fund expenditures over revenue and 2009 was no exception. In 2007, the City originally budgeted \$6,054,087 in revenue and \$9,927,218 in expenditures and a remaining General Fund balance of \$1,221,126. In 2008, the City originally budgeted \$6,372,430 in revenue and \$9,859,072 in expenditures and a remaining General Fund balance of \$820,858. In 2009, the City originally budgeted \$6,820,140 in revenue and \$9,871,081 in expenditures and a remaining General Fund balance of \$419,362.

The City will argue that they have a declining unreserved fund balance and the General Fund Balance for year end 2009 was only \$835,000. The final General Fund balance exceeded the original budget as noted above. The City may point to expenditures that exceed revenue as the cause of the fund balance decline. However, the City follows an aggressive debt reduction strategy whereby long term obligations are paid off in ten years as compared to fifteen or twenty years. The City has made substantial debt payments in recent years. The Union asserts that the excess unreserved funds are utilized to pay down debt. The debt payments are the cause of the

declining fund balances and not excessive General Fund expenditures over revenue. In addition, the City has maintained an Aa1 credit rating.

While the Union concedes that the City has the discretion to spend funds as it deems appropriate, the facts demonstrate that the City has ample funds available, but chooses to spend funds on programs other than the Police Department. Thus, the City cannot sustain the burden to show an inability to pay.

As one additional modification, the Union seeks a clarification of the language to exclude a disciplinary suspension from the definition of a "break in service" for purposes of longevity. In theory, an employee who serves a three day suspension would be considered terminated for purposes of longevity accrual and would start over. It is the Union's understanding that this language modification conforms to the current department practice.

The Union's proposal is the following:

Article XIX – Wages.

Section 1: **Effective January 1, 2010**, employees in the bargaining unit shall receive the wages set forth below based on an annual year of 2,080 hours. **Wage rates for 2011 and 2012 shall be subject to wage reopener to be commenced in December of each calendar year. Wage reopeners shall be subject to the statutory alternative dispute mechanism in R.C. 4117, et. seq.**

	1/1/2010
	0%
Sergeant of Police	\$76,059
Patrolman Class A	
After 3 Years	\$67,309
Patrolman Class B	
After 2 Years	\$63,117
Patrolman Class B	
After 1 Year	\$58,924
Patrolman Class B	
First Year	\$54,729*

*Employees attending the Police Academy shall be paid 90% of the above rate while attending the Academy (\$49,256). Patrolman, Detective is a title assignment delegated by the Chief of Police.

The underlying rank is that of Patrolman Class A. Seniority within the department for any such person will be determined by his or her seniority standings as a Class A Patrolman with respect to all other patrolmen.

Section 2: In addition to the above annual rates of pay, each eligible employee shall, on December 15th, receive a lump sum payment based upon the salary set forth above and based upon full years of service as of December 1st:

5 years, but less than 10	2%
10 years, but less than 15 years	3%
15 years, but less than 20 years	4%
20 years or more	6%

Time served by an employee during any probationary period shall be included in computing eligibility for longevity pay. Any interruption in the service of an employee, except for allowed vacations, holidays, sick leave, authorized leaves of absence **and disciplinary suspensions** shall be deemed a termination of such employee's tenure in office for the purposes of determining eligibility for longevity pay.

The Union believes the proposal is reasonable and well within the City's ability to pay.

c. MEDICAL INSURANCE.

Per the terms of the current CBA, each employee must contribute twenty-five dollars (\$25) for single coverage and fifty dollars (\$50) for family coverage toward their respective monthly premium for health insurance. The CBA provides a set schedule for the employees' cost of co-payments, co-insurance and/or deductibles with such amounts remaining unchanged for the term of the Agreement. In 2010, the City changed insurers which excluded from coverage services provided at University Hospitals of Cleveland (UH) and increased co-pays. Several bargaining unit members had ongoing treatment and care at UH which would not be covered until the employee reached the maximum non-network, out-of-pocket deductible. Assuming an employee exceeded the out-of-pocket, non-network deductible limit for medical

coverage in any given year, the cost to the employee would be \$2,400/single and \$4,800/family. The Union has a pending grievance concerning the comparability of the coverage.

In principle, the Union does not object to the change in insurers provided some maximum non-network, out-of-pocket limit may be negotiated. It is also anticipated that the City will seek an increase in monthly premium contributions from the employees. The Union opposes any increase in premium payments and proposes no other changes to the health insurance provision.

d. SPECIALTY/FIRST RESPONDER COMPENSATION.

The Union proposes to add additional compensation based on qualifications held by the Patrol Officer. As is comparable for other cities in Cuyahoga County, patrol officers receive additional compensation for various standards or proficiencies met. Additionally, Pepper Pike Fire Fighters receive an additional 3% for paramedic certification and Pepper Pike service employees receive \$1.15 per hour for a commercial driver's license. The bargaining unit seeks comparable pay for their qualifications.

As a means to defray additional costs to the City until 2011, the Union would agree to waive any compensation for 2010 for Specialty Pay. The Union proposes the following:

Article XXII. MISCELLANEOUS

Section 6. Specialty / First Responder Compensation

All Officers who maintain their training in: Firearm Qualifications (handgun, shotgun, and assault rifle), Less Lethal (minimum 2 of 3 listed: Taser, Pepper Spray, Baton), CPR, AED, First Aid, BAC Datamaster mandated by Ohio Department of Health, and Continuing Professional Training mandated by OPOTC shall receive the following additional compensation:

1/1/2010	1/1/2011	1/1/2012
0%	1%	2%

Employees are eligible to earn Specialty/First Responder Compensation beginning from their anniversary date of employment after the first (1st) continuous year of employment and each year thereafter. Employees who earn Specialty/First Responder Compensation shall be paid during the calendar year after it is earned. Such additional compensation shall be included in the employees' regular base pay based on an annual year of 2,080 hours.

Employees who would have otherwise qualified in the year 2010 shall receive Specialty/First Responder Compensation beginning January 1, 2011.

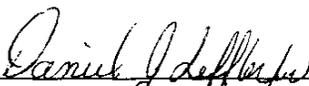
e. HOURS OF WORK.

It is anticipated that the City will seek to implement a reduction in the hours of work or a temporary furlough of all employees on a biweekly basis. The Union opposes any modification of the status quo. The Union does not propose any modifications to the hours of work.

III. Conclusion.

For the foregoing reasons, the OPBA submits the above positions to the fact-finder and requests the fact-finder adopt the Union's position on each of the issues. The Union will further support its proposals with testimony and exhibits at the hearing of this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

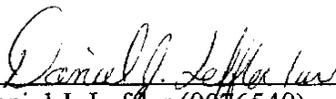
I hereby certify that a copy of the foregoing Position Statement of the OPBA was sent this 11th day of March, 2010 via email and U.P.S. Overnight Delivery to the following:

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and

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