

C9-MED-10-1308

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

Case No. ~~00-MED-10-1308~~

2010 MAR -4 P 1:29

IN THE MATTER OF A FACT-FINDING BETWEEN:

Fraternal Order of Police, Beaver Creek Lodge No. 160 }
and }
The City of Beaver Creek, Ohio }

Before Richard J. Colvin, Fact-Finder

**REPORT AND RECOMMENDATIONS
MARCH 3, 2010**

Representing the Fraternal Order of Police:

Sorrell Logothetis, Attorney, Cook, Portune & Logothetis, LPA
Officer Chris Williams, President, Local Lodge 160
Officer Eric Grile, Bargaining Committee
Officer Scott Molnar, Bargaining Committee

Representing The City of Beaver Creek:

Janet K. Cooper, Attorney, Cooper, Gentile & Washington Co.
John B. Turner, Chief of Police
Dennis L. Evers, Captain
Bill Kucera, Financial Administrative Services Director
Jeff McGrath, Planning Director

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BACKGROUND

The Fact-Finder was appointed by the State Employment Relations Board on December 2, 2009, in compliance with Ohio Revised Code Section 4117.14(C).¹

The parties timely filed the required pre-hearing briefs.

At the hearing, the Fact-Finder offered to mediate the disputed issues. The parties declined and the open issues proceeded to hearing.

The Union and the City are parties to an Agreement commencing on the 1st day of January 2008 and in effect through the 31st day of December 2009.

The parties have met in formal bargaining sessions on December 2, 11 and 17, 2009.

The bargaining unit is composed of three (3) Units:

UNIT A

Included:

“All police employees holding the rank of Patrolman in the City of Beavercreek; Patrolman.”

UNIT B

Included:

“All police employees holding the ranks of Sergeant and Lieutenant in the City of Beavercreek; Sergeants and Lieutenants.”

UNIT C

Included:

“All civilian employees holding the position of Dispatcher, Records Clerk, Dispatcher, Property and Resources Clerk, and Community Relations/Crime Prevention Specialist in the Police Department for the City of Beavercreek.”

¹ Pursuant to Ohio Administrative Code Rule 4117-9-05(G), the parties agreed to extend the date for issuance of the Fact-Finder’s Report to March 3, 2010.

The parties informed the Fact-Finder that **UNITS B and C**, as set forth above², have already reached an Agreement with the City. The evidence and testimony given in this hearing is therefore directed only to the resolution of the open issues between **UNIT A**, the approximately 37 sworn police officers holding the rank of Patrolman in the City of Beavercreek.

There are four (4) issues that were apparently unresolved between the parties prior to the opening of this Hearing.

According to the **City** in its Position Statement these were:

A. Article 18, **Insurance** – Section 18.01. Medical Insurance

The City had proposed to replace the current health insurance base plan with a PPO plan which does not substantially reduce coverage levels or provider network from the current plan, and which does not significantly increase cost shifting to employees. In addition, members may elect a Health Savings Account Option.

B. Article 19, – **Fringe Benefits**, Section 19.03. Seniority Bonus

The Union has proposed to increase the seniority bonus amounts and add a category for employees with 26 years of service and above. The City rejected this proposal and proposes that the contract language remain the same.

C. Article 20, **Wages**

The City has proposed to increase wages as follows:

2.75%, retroactive to January 3, 2010

2.75% effective January 2, 2011

A wage reopener and a reopener for insurance in the third year of the Agreement.

D. Article 28, **Duration**

The City has proposed a three (3) year Agreement.

² SERB Case No's: 09-MED-10-1309 and 09-MED-1310

The **Union** in its Position Statement alludes to the tentative settlement proposal reached after the parties' final formal bargaining session, the terms of which were:

2.75% wage increases effective January 1, 2010 and January 1, 2011, with a wage and insurance re-opener for the third year.

The City's new insurance program was adopted.³

Acceptance of the Lodge's proposal for increases in the seniority bonus.

As has already been noted, this tentative settlement was ratified by the Sergeant's Unit, B. and the Civilian's Unit, C. but was rejected by the Patrol Unit, A.

Wages: The Union's last proposal on wages was:

Effective January 1, 2010	4.0%
Effective January 1, 2011	4.0%
Effective January 1, 2012	3.5%

Seniority Bonus, Section 19.03 reads in the existing Agreement:

7 through 10 years of service	\$400
11 through 15 years of service	\$500
16 through 20 years of service	\$600
21 years of service and above	\$700

³ This insurance program has also been adopted by the Communications Workers of America (CWA). This Union represents approximately 58 employees of the City of Beavercreek. The program is also in effect for the non-represented employees of the City. It further appears that the Union is not adverse to accepting the City's proposal for the new insurance program as, after the City presented its arguments for the adoption of the new program, the Union stated that it had no doubt that the Fact-Finder would never recommend or in effect, carve-out a separate plan for the Patrol Unit since all other employees had accepted or ratified the change. It had assumed the City understood this and so the Union had accepted the concept. The Union also contended that the parties at all times had agreed that wages and insurance would be tied together.

The Union proposed on December 2, 2009 to modify the Seniority Bonus as follows:

7 through 10 years of service	\$ 400
11 through 15 years of service	\$ 600
16 through 20 years of service	\$ 800
21 through 25 years of service	\$1,000
26 years of service and above	\$1,200

Duration, Section 28.01:

The Union's last proposal on Duration, December 2, 2009, was:

"This Agreement shall commence as of the 1st day of January, 2010 and shall remain in full force and effect through and including the 31st day of December, 2012 and thereafter for successive one (1) year periods unless either party gives written notice of its intent to terminate and/or amend any portion thereof not less than sixty (60) days prior to the 31st day of December, 2012 or the 31st day of December in any succeeding year this Agreement remains in force."

Insurance, Section 18.01: As has been discussed.

ANALYSIS AND RECOMMENDATIONS

CRITERIA

When making his analysis and recommendations upon the unresolved issue(s), the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code Section § 4117.14 (C) (4) (e) and Ohio Administrative Code § 4117-9-05 (K).

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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) The stipulation of the parties;

(6) Such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment.

Analysis of the Positions of the Parties on the Unresolved Issues:

A. Article 18, Insurance – Section 18.01, Medical Insurance

1. The Union:

The Union has taken an exceptional and rational approach to this unresolved issue as:

a. It agrees with the concept, that is, the actual proposal made by the City, to replace the current health insurance base plan with a PPO plan and the inclusion of a Health Savings Account Option, and;

b. It recognizes that since all the bargaining units, other than the Patrol Officers, have accepted the City's proposal to modify Article 18, Section 18.01 it is unrealistic and impractical to oppose accepting the new medical insurance plan. The Union had opposed this new program. While the program includes, in the Union's description, moderately increased premium rates and across-the-board increases in co-pays, the wage increases proposed by the City, 2.75% and 2.75%, are not great enough to sustain those increased costs.

Furthermore, as premium-sharing costs rise Patrol Officers will incur significant out-of-pocket increases. The Union also contends that increased insurance costs have “virtually dissipated wage increases” and officers are being “pushed into a negative position when wage increases are balanced out against increased insurance costs.”

2. **The City:**

The City proposed to replace the current health insurance base plan with a PPO plan which does not substantially reduce coverage levels or provider network from the current plan, and which does not significantly increase cost shifting to employees. In addition, members may elect a Health Savings Account Option.

Recommendation of the Fact-Finder:

Rationale: An examination of the provisions of the medical insurance plan is not necessary in this case. Nor are the usual comparisons to other communities relevant. However, it is relevant in this Fact-Finders opinion to take notice that the other members of this bargaining unit, as well as members of the CWA and all unrepresented employers of the City have adopted and will participate in the base medical insurance plan as revised.

The claim by the City’s insurance representative that the plan is one of the “richest plans provided” goes without rebuttal.

It is noted that the Agreement there is an active Health and Wellness Committee designated to assist in:

Reviewing and understanding the City's insurance products, educating the members of the factors that drive the renewal rates, and to make recommendations to the City Manager concerning insurance plans, and potential changes to the medical, dental, life insurance and supplemental insurance products offered by the City.

It is my recommendation that the bargaining unit composed of Patrol Officers participate in the City's proposed medical insurance plan as set forth in Article 18, Section 18.01:

"Effective the first of the month following ratification of this 2010 Agreement, the base plan for insurance will become the PPO plan reflected in Appendix A. In addition, members may elect a Health Savings Account Option, also reflected in Appendix A."

B. Article 19 – Fringe Benefits. Section 19.03. Seniority Bonus

1. The Union:

The Union accepts the premise that the City can take the position that since this bargaining unit failed to ratify the settlement proposal, this issue is closed. But, it argues that this proposal was rejected, as was the City's proposed medical plan modification on the basis of the alleged inadequate wage proposal by the City. The Union does not emphasize a specific comparison to other communities but sees a common sense reason to extend this benefit to the bargaining unit arguing that it would seem to be in the best interest of the City and the public to provide inducements to encourage police officers to remain with the City. The corps of officers is stable.

The Union explained that with the Pension Fund's adoption of the D.R.O.P Program, officers are extending their careers, which makes the addition of another step (26 years and above) a matter of increasing importance.

2. **The City:**

The City proposes that Section 19.03, Seniority Bonus remain unchanged from the 2008-2009 Agreement.

The City and Units B. and C. did reach agreement on this issue. There were few oral arguments against this proposal presented by the City. In its written argument, the City noted that in the last Agreement, 2008-2009, the entry level Seniority Bonus was lowered from eight (8) years to seven (7) years.

Recommendation of the Fact-Finder:

Rationale: The Fact-Finders' notes do not reflect the cost factor in implementing this proposal and the seniority bonus comparables submitted by the City are not persuasive enough to cause the Fact-Finder to reject the Union's proposal.

The labor Agreement between the Union and the City in Article 1, Purpose reads, in part, in Section 1.01: "The purpose of this Agreement is to achieve the cooperation desired between the City and the Lodge to establish the basic wages, hours, working conditions, and fringe benefits for Employees and to provide for the peaceful adjustment of differences which may arise between said parties under this Agreement."

Having the Sergeants and the Civilians with an enhanced Seniority Bonus provision during the life of this Agreement is not conducive to cooperation or to maintaining an harmonious relationship.

As the Union remarked in its written argument, so far, the instant negotiations had an “unprecedented result, in that the Sergeants and Civilians settled with the City, while the Patrol Officers voted down the same package.”

There is certainly a cost component for this proposal. Were there some compelling reasons advanced for the Fact-Finder to reject this proposal then it would not be recommended for acceptance. As it is, it is my conclusion that it would be in the best interest of both parties for the City to accept this proposal.

It is my recommendation that the existing Article 19, Section 19.03 be amended to read:

7 through 10 years of service	\$ 400
11 through 15 years of service	\$ 600
16 through 20 years of service	\$ 800
21 through 25 years of service	\$1,000
26 years of service and above	\$1,200

C. Article 20. Wages

1. The Union:

The Union’s position is that: (1) The 2.75% increases for two (2) years does not match up with the City’s ability to pay, and with comparable increases for the year 2010 in surrounding departments; (2) That the re-opener in the third year undermines the stability of labor relations that have existed for many years in the bargaining relationship between the City and the Union.

(a) The City has not made a claim of inability to pay in these negotiations. The City’s wage proposals are incongruous with the City’s economy. The City of Beavercreek must be recognized as a thriving, prosperous City, probably at the forefront of comparable municipalities in the greater Dayton area.

For all of the Dayton area municipalities, Beavercreek ranks at or near the top for all economic indicia, including average family income, percent of population below the poverty level, percent of home ownership, inclusion of the Dayton area's wealthiest zip codes and excellent city schools.

(b) A review of the FOP wage increases since 1985 will reflect a history of credible increases, but always reasonable and responsible, with the percentage increases since 1993 being in the range of 3.5% to 4%.

By way of representative examples, the Union offers wage settlements beginning in 1985. Taking a sample, beginning in 1996:

1996	3.5%	2001	3.5%	2006	3.0%
1997	3.5%	2002	3.5%	2007	3.5%
1998	3.5%	2003	3.5%	2008	3.25%
1999	3.5%	2004	4.0%	2009	3.5%
2000	3.5%	2005	3.0%		

(c) The Union's proposals are warranted by comparisons to fourteen (14) cities of comparable in size in the greater Dayton area. In SERB's Clearinghouse Wage Increase Report Local Dayton Area, comparison cities had a 2010 wage increase of at least 3%.

An increase of 2.75% or lower would cause the Patrol Officers to "lose ground" in relation to their counterparts who work for cities that do not have Beavercreek's financial strength. To buttress this argument the Union quotes Fact Finder N. Eugene Brundige in his April 2008 Report:

“Beavercreek employees do a very good job and their resources are spread thin.

Notwithstanding this reality, Beavercreek bargaining unit employees have been comparably compensated over the past several years.

They should not lose ground in this round of bargaining.”

The Union ends its argument by referencing its continuing allegation that the Department is under-staffed. The manning table now provides for 48 employees. Two (2) slots have remained unfilled for at least one (1) year.

2. **The City:**

The City presented the 2010 Appropriations Budget Summary for review. Highlights were that while a balanced budget (current revenues equaling current expenditures) could not be achieved in some funds, the minimum 15% reserve balance was achieved. Budget Highlights featured the projection that property taxes were relatively flat and there would likely be an increase in the delinquency rates. Other revenues such as interest income, planning and zoning fees that are economy driven decreased slightly for 2010.

Expenditures are based on economic conditions and the City’s relies on property taxes and levies for the majority of its operational revenue. The City did not include a cost of living increase during the budget process for employees in 2010. With significant reductions already in place and with part-time positions, the layoffs and furloughs of full-time personnel common to other communities should be avoided. Reducing wage increases represents the best alternative. The most recent Health care rate increase was 20%.

A Health Savings Account will be introduced as a long-term strategy. This, it is anticipated, will reduce health care spending and assist the City in containing future premium increases.

Overall the City has provided residents with a conservative, fiscally responsible budget. Captain Dennis Evers included information on all police contracts settled in 2009 statewide for cities and stated that the average wage increase for such contracts settled in 2009 was: 2009, 2.25%; 2010, 2.6%; 2011, 2.9%. Xenia 's settlement was: 2009, 0%; 2011, 4.0%

Montgomery County Cities from this FOP/OPBA Wage Increase Report:

<u>City:</u>	<u>Year:</u>	<u>Amount of Increase:</u>
Huber Heights	2009	2.83%
	2010	2.83%
	2011	2.83%
Kettering	2009	3.00%
	2010	3.00%
	2011	3.50%
Oakwood City (OPBA)	2009	3.00%
	2010	3.23%
	2011	3.50%
Riverside City	2009	3.00%
	2010	3.00%
	2011	3.00%
Trotwood City (OPBA)	2009	0.00%
	2010	Wage reopen
	2011	Wage Reopen
Union City ⁴ (OPBA)	2009	3.00%
	2010	3.00%
	2011	3.00%

⁴ EACH YEAR THERE WAS A 1% INCR EES>10 YEARS. ALSO \$2000 EQTY ADJ FOR <THN 10 YRS

The City pointed out that the Police Levy is up for renewal again in 2011. The Police Levy is to account for property tax receipts designated for operation of the police department, including the payment of the employer portion of police pension fund contributions, and to account for monies charged for police services outside the City. An earnings tax issue on the ballot is not a sure proposition.

There is no income tax and the City relies upon property taxes and levies for the majority of its operational revenue. Large retail developments do not contribute to the revenue stream initially, when built. Perhaps in two (2) or three (3) years the benefit will be felt. The hospital construction does not mean revenue growth, as it is non-profit.

As for the Union's arguments on staffing, the City argued in rebuttal that the Department is properly staffed based upon its utilization.

Recommendation of the Fact-Finder:

Rationale: The Fact-Finder has reviewed the testimony, the written arguments and the factual data presented by the Union and the City on this open issue. The most persuasive argument that could have been presented by the City was to argue and prove that it was in financial distress. That is not the case and was not argued before the Fact-Finder. The City of Beavercreek is well managed and fiscally prudent. Residents and employees of the City are fortunate to be living and working in one of the top 100 Cities in America. Beavercreek also enjoys a bond rating of A1 from Moody's.

Nevertheless, the City has determined that reducing wage increases is in the City's best interest and presents the best way to control expenses. That has been the case with Unit's B. and C. and with the CWA and so in those instances, the City's policy has prevailed. Some prudence is called for in my opinion. These are troubled times and no one can predict with any degree of certainty that the State of Ohio is now in an economic recovery.

The increases ratified in the preceding Agreement were in 2008, 3.25% and in 2009, 3.50% as recommended by Fact-Finder Brundige. The testimony and the evidence presented by the City in this hearing does not, in my opinion, support the City's proposal for a 2.75% increase in 2010; or for a 2.75% increase in 2011.

It is my recommendation that:

In the first year of the Agreement, 2010, there be a \$3.00% increase retroactive to January 1, 2010.

In the second year of the Agreement, 2011, there be a \$3.00% increase effective January 1, 2011.

In the third year of the Agreement, 2012, as proposed by the City: "There will be a reopener for wages (Article 20) and Medical Insurance (Article 18) during the third year of this Agreement. The parties will begin negotiations on or before September 1, 2011, with changes to become effective on January 1, 2012. The reopener will be subject to the dispute resolution provisions of Ohio Revised Code Chapter 4117."

E. Article 28, Duration:

1. The Union:

The Union has proposed a three (3) year Agreement with no reopener in the third year. In the view of the Union, a reopener is neither reasonable or positive nor of service to the parties. Three-year agreements have been the customary length of the labor Agreements between the parties and are favored in labor relations.

2. The City:

The City has proposed a three (3) year Agreement with a reopener for wages and insurance in the third year of the Agreement.

Recommendation of the Fact-Finder:

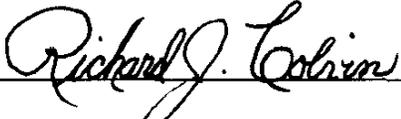
Rationale: In the normal course of events, I do not recommend wage reopeners as they are counterproductive and not in the best interest of the parties. In this case, however, there are extenuating circumstances.

Since Units B. and C., the Sergeants and the Civilian employees have ratified a reopener in the third year, as has the CWA, it would not be logical and in fact it would be disruptive for the Patrol Officers not to be a part of their agreement on this subject. This is unfortunate, in my opinion, but it is factual.

It is the recommendation of the Fact-Finder that the proposal of the City as set forth in **D. Wages** for a wage/medical insurance reopener in the third year of the Agreement above be adopted.

In addition, all Agreements previously reached by and between the parties that have been initialed and tentatively agreed to, along with any Sections of the current Agreement not negotiated and/or changed, are hereby incorporated by reference into this Fact-Finding Report and should be included in the resulting collective bargaining Agreement.

Respectively submitted and issued at the City of Mason, County of Warren and State of Ohio this 3rd day of March 2010.



Richard J. Colvin
Fact-Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Fact-Finding Report was forwarded to the State Employment Relations Board, Edward E. Turner, Administrator 65 East State Street, 12th Floor Columbus, Ohio 43215-4213 by Regular U.S. Mail and was also forwarded to the parties listed below, by Overnight Mail this 3rd day of March 2010.

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