

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2011 FEB 25 P 3: 21

In the Matter of)	
Fact-Finding Between:)	
)	
)	
CITY OF PERRYSBURG)	Case Nos. 10-MED-09-1024
)	10-MED-09-1025
)	10-MED-09-1027
)	
-and-)	
)	Jonathan I. Klein,
)	Fact-Finder
)	
OHIO PATROLMEN'S BENEVOLENT)	
ASSOCIATION)	

**FACT-FINDING REPORT
and
RECOMMENDATIONS**

Appearances

For the Union:

Michelle T. Sullivan, Esq.

For the Employer:

David M. Smigelski, Esq.

Date of Issuance: February 23, 2011

I. PROCEDURAL BACKGROUND

This matter came on for hearing on January 13, 2011, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on October 14, 2010. The hearing was conducted between the City of Perrysburg (“City” or “Employer”), and the Ohio Patrolmen’s Benevolent Association (“Union”), at the City of Perrysburg Municipal Building located at 201 West Indiana Avenue, Perrysburg, Ohio 43551. The bargaining units represented by the Union in this fact-finding process are as follows: 1) full-time and regular part-time Communication Officers, Record Clerks and Animal Control Officers comprised of approximately 10 employees; 2) full-time and regular part-time patrol officers comprised of approximately 22 employees; and 3) full-time sergeants comprised of approximately six employees.

As of the fact-finding hearing, the following issue remained open and is properly before the fact-finder for resolution:

1. Wages and Rate of Pay - Section 11.1 (Patrol Officers)
Wages and Rate of Pay - Section 11.1 (Communication Officers, Animal Control Officers, Records Clerks)¹
Wages and Rate of Pay - Section 11.1 (Sergeants)

1. The Union is also seeking to have Emily Wilkins, an employee in the Communication Officers, Animal Control Officers, Record Clerks bargaining unit, moved to the step on the appropriate Appendix “A” wage matrix which is commensurate with her department seniority.

The fact-finder incorporates by reference into this Report and Recommendations all tentative agreements between the parties relative to the current negotiations, and any provision of the current collective bargaining agreement not otherwise modified during negotiations and the fact-finding process. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (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 stipulations 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 procedures in the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Introduction

The Employer is a city located in Wood County in northwest Ohio near Toledo, Ohio. The record establishes that the population of the City of Perrysburg was 16,921 in 2009. Additionally, the per capita income of the City's residents and median household income was \$35,453.00 and \$69,365.00 respectively, according to the 2000 U.S. census. The City is comprised of 9.1 square miles. (City Position Statement, Tab 8).

The parties reached an impasse regarding the issue of wages during the negotiation of the current collective bargaining agreements in 2009. On April 6, 2009, Fact-Finder John T. Meredith issued his Report and Recommendations which provided for a 3.25% wage rate increase in 2009, a 3.00% wage rate increase in 2010, and a provision for a wage re-opener in 2011. The parties voted to accept the recommendations of Fact-Finder Meredith. In accordance with the wage re-opener provision, the Union notified the Employer of its intention to re-open contract negotiations regarding the issue of wages for 2011. The parties subsequently met and

discussed their respective proposals regarding the issue of wages, however, no agreement was reached.

At the hearing, both the Employer and Union presented argument and documentary evidence concerning various jurisdictions which each party considered to be comparable to the City of Perrysburg. Based upon the record presented in this case, the fact-finder determines that the following six (6) jurisdictions shall be utilized as comparables: Maumee; Bowling Green; Sylvania Township; Sylvania City; Oregon; and Perrysburg Township.

Issue 1: Wages and Rate of Pay

Position of the Union

The Union proposes a 2.75% wage rate increase effective March 2011, for employees of each bargaining unit. According to the Union's position statement, its proposal is based upon the original tentative agreement reached by the parties in 2008 which provided for 3.00% wage rate increases in 2009, 2010 and 2011 for the bargaining units of patrol officers and sergeants; and a matrix compression in 2010 for the communication officers/animal control officers/record clerks bargaining unit, along with 3.00% wage rate increases in 2010 and 2011 for those employees. The Union indicates that ". . . Council cited economic uncertainty as the reason it was reluctant to commit to wage increases in the third year of the Agreements, and it wanted the opportunity to reopen the Agreements on wages for the third year in the event the City's healthy financial position deteriorated. (footnote omitted)." (Union Position Statement).

The Union maintains that there are presently no concerns regarding the City's financial condition, or its ability to pay. At the hearing, the Union highlighted various documents contained in its Position Statement regarding the City's stability and the fact that it is "financially well situated." (Union Position Statement, Tabs 11, 12, 13, 14). There have been no layoffs, furloughs or job vacancies in the City. The Union also points out that the City has a AA bond rating from Standard & Poor's, and the General Fund carryover balance into 2011 is approximately 20.5 percent of its 2010 expenditures. Additionally, income tax collections in 2010 remained stable, and the unemployment rate in the City of Perrysburg is below the state average. Furthermore, the City has continued its aggressive policy of annexation, thereby increasing potential income tax collections and revenue. (Union Position Statement, Tabs 16 and 17).

While the City of Perrysburg is above-average in its economic status, the wages afforded bargaining unit members do not compare favorably with the wages of similarly situated employees in comparable jurisdictions. At the hearing, the Union pointed out that the starting wage rate for patrol officers employed by the City is at the bottom of comparable jurisdictions. (Union Position Statement, Tab 1). Additionally, the top wage rate for the City's patrol officers is also near the bottom when compared to the wages received by patrol officers in other jurisdictions. (Union Position Statement, Tab 1). Furthermore, the wage rates of the City's sergeants and dispatchers is also lower than the wage rates afforded employees who hold those positions in comparable jurisdictions. (Union Position Statement, Tabs 2 and 3). According to

the Union, Perrysburg Township; Sylvania Township; and the City of Sylvania are the most demographically comparable jurisdictions to the City of Perrysburg. Unlike Bowling Green, the Union notes that the City of Perrysburg is not experiencing financial difficulties. It is clear that a 2.75% increase is necessary in order to maintain competitive wage rates for bargaining unit members. “Many of the unionized Perrysburg Police Department employees rank in the lower half of comparables when compared to similarly situated employees in both the greater Toledo area, as well as across the state.” (Union Position Statement).

The Union points out that the economic downturn began prior to negotiations for the current contract, and prior to the date of the tentative agreement in December 2008. It also maintains that the bargaining units in this case have not been in “lock-step” with the City’s firefighters. Additionally, the 1.75% wage rate increase for the City’s firefighters is below the state average. The Union also asserts that the City should not be tied to what happens in the City of Toledo, and it is not comparable with Lucas County simply because of geographic proximity. Furthermore, Defiance and Findlay are not appropriate comparables due to their distance from the City and the rural nature of Defiance.

In regard to Emily Wilkins, an employee in the bargaining unit which is comprised of communication officers, records clerks and animal control officers, the Union requests that she be placed at the appropriate step in the wage matrix which is commensurate with her department seniority. The Union points out that the City conditioned the transfer of Ms. Wilkins from dispatcher to records clerk upon her moving to a step that was lower than her department

seniority in order to avoid a situation where she would earn a higher wage rate than the other records clerk who had worked in that classification for a longer period of time. However, that situation no longer exists because the individual who held the position of records clerk at the time of Ms. Wilkins' transfer has since been promoted to a supervisory position. Thus, ". . . there is no longer a situation in which paying Ms. Wilkins a rate that is commensurate with her department seniority would cause her to earn more money than an employee with more time in that particular classification." (Union Position Statement). The Union maintains that its request regarding this matter is both reasonable and equitable.

Position of the City

The City maintains that there should be no additional wage increases during the term of the existing contracts, and the current hourly wage rates set forth in Appendix A of the respective collective bargaining agreements should remain unchanged. However, bargaining unit employees will be permitted to progress in the pay matrices and receive step increases as set forth therein.

The City asserts that its proposal ". . . is eminently reasonable in light of the dismal state of the economy, the existing wage rates in neighboring communities of comparable size and constitution, as well as the bargaining history between the parties." (Employer Position Statement, 6). The City points out that unemployment in the Toledo Metropolitan Statistical Area (MSA) is 10.5%, and there was a 4.3% decrease in household income in Ohio in 2009

according to the U.S. Census Bureau. Additionally, there was no increase in the consumer price index, and no cost-of-living adjustments by the Social Security Administration during the past two years. (Employer Position Statement, Tabs 4 and 6). Moreover, salaries have decreased in the Toledo metropolitan area, and a two-year pay freeze was announced for federal government employees. (Employer Position Statement, Tab 7). However, the City acknowledged at the hearing that it is not claiming an inability to pay in this case.

The argument that the City should accept the Union's proposal because it has the financial ability to provide for the requested wage increases is "... short-sighted and in complete disregard of the economic situation facing the citizenry of the City of Perrysburg." (Employer Position Statement, 7). The Employer does not view the general economic conditions in a vacuum, and it seeks to ensure that there is a future for the City. In that regard, the general fund debt is being decreased in order to position the City to address unforeseen financial issues. John Alexander, the City's Administrator, stated at the hearing that he is passionate about the need to maintain fiscal security in order to provide quality public service and safety programs for the citizens of Perrysburg. According to Alexander, the City has the flexibility to address the overall needs of the community as a result of maintaining personnel costs at approximately 62% to 64% of the budget, as compared to 70% to 80% for comparable governmental entities. The City also acknowledges that it has an aggressive annexation plan, however, there are risks associated with such a plan.

The City further notes that income tax collections, its largest source of revenue, have remained flat from 2007 figures, however, personnel costs have increased by over 17% during this period. The City maintains that such a trend is unsustainable and it has acted to adjust its budget and personnel costs accordingly. Specifically, all non-bargaining unit employees will receive no wage increases or adjustments in 2011, and the firefighter unit voted to accept a finder-finder's recommendation of a 1.75% wage rate increase in 2011. Pattern bargaining has occurred in the past, and the police and fire units would each receive 6.25% wage rate increases over the course of the their respective contracts if the police units receive no wage increases in 2011.

The City contends that “[b]ecause the negotiations with the police units commenced as a result of a wage re-opener provision, they must be viewed as part and parcel of the existing contract.” (Employer Position Statement, 7). The wage rate increases of 3.25% and 3.00%, which the bargaining units received in 2009 and 2010 respectively, far exceed the state averages and place the units at or near the top of the scales for total compensation increases negotiated over the usual three year period. Furthermore, using the current compensation figures, the police unit is at the high end of the spectrum compared to the wages received by their peers performing comparable work in similarly situated local communities. The City points out that the wages received by the sergeants are in the “middle or high end” when compared to sergeants at comparable jurisdictions, and the patrol officers are “towards the middle.” (Employer Position Statement, Tabs 9 and 10). Additionally, the wage rate for records clerks is also “towards the

top.” (Employer Position Statement, Tab 12). According to the City, overall wage rate figures for 2010 are trending down, and post-2008 collective bargaining agreements must be viewed differently than pre-2008 contracts due to the downturn in the economy. Moreover, the City asserts that it is tied to the successes and failures of the City of Toledo. It is not seeking concessions from the bargaining units in this case, but rather, that the high level of current compensation be maintained. The fact-finder must look at the total compensation received by bargaining unit members during the three years of the contract. Accordingly, the City requests that the fact-finder recommend its position regarding wages.

As it concerns the Union’s request that records clerk Emily Wilkins should be bumped two steps on the wage matrix, the City maintains that no change should occur for the reason that a Memorandum of Understanding was voluntarily executed by Ms. Wilkins and the Union prior to the commencement of her duties as a records clerk which provides for her current placement on the matrix. The City is unwilling to ignore the terms of the Memorandum of Understanding, and maintains that there should be no individual treatment of an employee.

Final Recommendation

It is the fact-finder’s recommendation that the wage rate matrices referred to in Section 11.1 and contained in Appendix “A” of the respective collective bargaining agreements for the City’s communications officers, animal control officers, and records clerks bargaining unit; the patrol officers bargaining unit; and the sergeants bargaining unit, should each be adjusted to

reflect an annual wage rate increase of 2.00% commencing March 1, 2011. For the following reasons, the fact-finder determines that the recommended wage rate increases for bargaining unit employees are fair and reasonable under all the facts and circumstances.

The fact-finder notes that the annual starting wage rate of \$45,427 for the City's patrol officers is less than the annual starting wage rates received by patrol officers in Perrysburg Township; Sylvania City; Oregon; Sylvania Township; and Bowling Green, according to the City's figures. (Employer Position Statement, Tab 10).² The record reveals that the starting wage rate for patrol officers employed by the City is \$21.84 per hour, while similarly situated patrol officers in comparable jurisdictions receive the following wage rates: Bowling Green (\$22.11/hr.); Maumee (\$22.29/hr.); Sylvania Township (\$22.91/hr.); Oregon (\$23.56/hr.); Sylvania City (\$24.2179/hr.); and Perrysburg Township (\$25.16/hr.). (Union Position Statement, Tab 1). The City's starting wage rate is approximately 6.6% below the average comparable rate. The record further reveals that the top rate of pay for patrol officers employed by the City is lower than the top wage rate afforded patrol officers in each of the aforementioned comparable jurisdictions with the exception of Bowling Green. (Union Position Statement, Tab 1). Additionally, the top annual wage rate for patrol officers employed by the City is lower than the top wage rates received by patrol officers in four of the six comparable jurisdictions. (Employer

2. The inconsistencies between the City's annual wage and the Union's hourly figures for the City of Maumee's patrol officers starting pay remain unclear to the fact-finder.

Position Statement, Tab 10). Thus, it is clear that the wage rates afforded the City's patrol officers are lower than the wages received by patrol officers employed by a majority of the comparable jurisdictions.

The documentary evidence presented at hearing also indicates that the annual starting pay for sergeants employed by the City is less than that which is earned by their counterparts at four of the six comparable jurisdictions. (Employer's Position Statement, Tab 9). However, the top annual pay for the City's sergeants is more than the top annual pay for sergeants at five of the six comparable jurisdictions. (Employer's Position Statement, Tab 9).

The record indicates that the starting wage rate for communications officers/dispatchers employed by the City is less than the starting wage rate for similar employees at each comparable jurisdiction. (Union Position Statement, Tab 3; City Position Statement, Tab 11). Additionally, the top wage rate for the City's communications officers/dispatchers is near the bottom of the range of top wage rates received by such individuals employed in comparable jurisdictions. Furthermore, the evidence reveals that records clerks employed by the City receive an annual wage which is greater than their counterparts in Oregon and Sylvania Township, but less than that which is afforded the records clerks employed by Perrysburg Township. (Employer Position Statement, Tab 12). Finally, the arbitrator notes that the City's animal control officers receive more than individuals employed in such positions by the comparable cities of Bowling Green and Maumee. (Union Position Statement, Tab 5; City Position Statement, Tab 13).

The State Employment Relations Board (SERB) Wage Increase Report provides that the following wage rate increases were received by employees at comparable jurisdictions:

Bowling Green	3.50% effective 8/18/2008	Sgts.
	0.00% effective 8/1/2009	Sgts.(w/wage re-opener)
	2.00% effective 12/27/2010	Sgts.
Maumee	0.00% effective 1/1/2009	(combined safety unit)
	lump sum 3.00% of annual base wage rate-1/1/2010	
	2.00% effective 1/1/2011	(combined safety unit)
Oregon	2.00% effective 7/1/2010	Sgts.
	2.50% effective 7/1/2009	Combo safety unit
	2.00% effective 7/1/2010	Combo safety unit
Perrysburg Township	3.00% effective 1/1/2008	(Dispatchers)
	2.75% effective 1/1/2009	“
	3.00% effective 1/1/2010	“
	3.00% effective 1/1/2008	(Sgts.)
	2.80% effective 1/1/2009	“
	3.00% effective 1/1/2010	“
	3.10% effective 1/1/2008	(Ptl.)
	3.00% effective 1/1/2009	“
	3.00% effective 1/1/2010	“

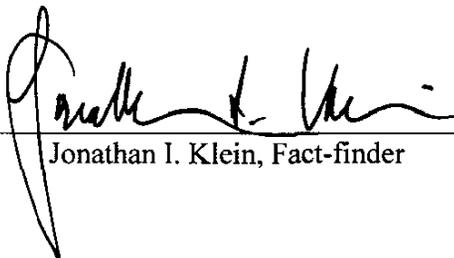
(Union Position Statement, Tab 9).

The Union also indicated at the hearing that the City of Sylvania agreed to a 3.00% wage rate increase across the board in 2009-2011 for all bargaining units, and Sylvania Township recently entered into a tentative agreement which provides for a 2.00% wage rate increase and a \$750.00 lump sum payment to its bargaining unit employees. The aforementioned wage rate

increase data for the City of Sylvania and Sylvania Township as stated by the Union was not contradicted by the Employer. The arbitrator also notes that according to SERB, fact-finders recommended an average wage rate increase of 2.08% in 2010. (Union Position Statement, Tab 10).

Although the City's firefighter bargaining unit accepted a fact-finder's recommendation of a 1.75% wage rate increase in 2011, the fact-finder in this case determines that a 2.00% wage rate increase in 2011 for the communications officers, animal control officers and records clerk bargaining unit; patrol officers bargaining unit; and the sergeants bargaining unit is appropriate in order to maintain wage rates afforded employees in those bargaining units which are comparable to the wage rates received by their counterparts employed in relevant jurisdictions. The recommended wage rate increase is also appropriate in light of the fact that the City of Perrysburg is above average as it concerns the per capita income of its residents and the median household income of comparable jurisdictions. This recommendation also takes into consideration the relatively good economic health of the Employer's finances as compared to other governmental entities. The fact-finder notes that the collection of income taxes by the City, which is its largest source of revenue, increased in 2010. (Union Position Statement, Tab 12). Additionally, the City's unencumbered fund balance as a percentage of expenditures also increased in 2010. (Union Position Statement, Tab 13). Moreover, an inability to pay argument was not raised by the Employer in this case.

The fact-finder further recommends that records clerk Emily Wilkins should be placed at the appropriate step on the applicable wage matrix in accordance with her overall department seniority. The fact-finder determines that it is reasonable to do so under the circumstances because the justification for initially placing Ms. Wilkins at a lower step no longer exists.

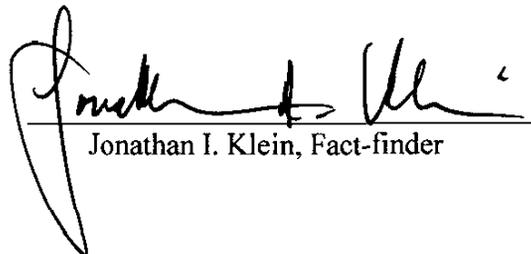


Jonathan I. Klein, Fact-finder

Dated: February 23, 2011

CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendations were served on Michelle T. Sullivan, Esq., Allotta, Farley & Widman Co., L.P.A., 2222 Centennial Road, Toledo, Ohio 43617, msullivan@afwlaw.com; David M. Smigelski Esq., Spengler Nathanson P.L.L., Four SeaGate, Suite 400, Toledo, Ohio 43604-2622, dsmigelski@snlaw.com; and upon J. Russell Keith, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, russel.keith@serb.state.oh.us; each by electronic mail and regular U.S. mail, sufficient postage prepaid, this 23rd day of February 2011.



Jonathan I. Klein, Fact-finder

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February 23, 2011

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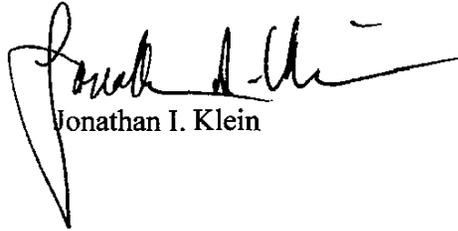
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Re: *OPBA -and- City of Perrysburg*; SERB Case Nos. 10-MED-09-1024, 10-MED-09-1025, and 10-MED-09-1027

Gentlemen:

Enclosed please find the Fact-finding Report and Recommendations issued this date via electronic mail, together with an invoice for my services and expenses.

Very truly yours,


Jonathan I. Klein

✓ cc: J. Russell Keith, Esq. (w/awd)



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