

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact Finding	*	
Between	*	FINDINGS
	*	AND
OHIO PATROLMEN'S BENEVOLENT	*	RECOMMENDATIONS
ASSOCIATION	*	
	*	10-MED-09-1109
and	*	10-MED-09-1110
	*	
CITY OF PEPPER PIKE	*	Anna DuVal Smith
	*	Fact-finder

Appearances

For the Ohio Patrolmen's Benevolent Association:

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Ohio Patrolmen's Benevolent Association
10147 Royalton Rd., Ste. J
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For the City of Pepper Pike:

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I. SUBMISSION

Following a day of mediation on January 27, this matter came for hearing at 9:00 a.m. on February 23, 2011, at City Hall in Pepper Pike, Ohio, before Anna DuVal Smith who was appointed Fact-finder pursuant to Chapter 4117 O.R.C. Giving evidence on behalf of the Ohio Patrolmen's Benevolent Association were Ptl. Anthony Bekesz, Ptl. Thomas Gibson, Ptl. Shenkel, and Sgt. Richard Thompson. Giving evidence for the City of Pepper Pike were Finance Director Loren Sengstock and Jeremy Iosue, Consultant. Both parties were afforded a complete opportunity to examine witnesses, to present written evidence, and to argue their respective positions.

In rendering these Findings and Recommendations, the Fact-finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14(C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements 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) 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.

II. BACKGROUND

The City of Pepper Pike is located on the east side of Cleveland in Cuyahoga County just east of I-271. Contiguous communities include Beachwood, Mayfield Heights, Hunting Valley, Moreland Hills, Gates Mills and Woodmere. Population in 2000 was 5734; 2009 per capita income (in 2009 inflation adjusted dollars) was \$67,046. Its 1859 owner-occupied homes had an estimated median value of \$439,300. (Union Ex. 4) The Fact-finder takes note that Pepper Pike is largely a residential community but also hosts Ursuline College and some businesses. From 2004 to 2008 its unencumbered cash balance was more than \$4 million, but had shrunk

dramatically to \$835,018 by the end of 2009. The City reacted in several ways. It laid off five patrolmen (recalling one or more in August 2010), made buy-outs and reduced pay of nonbargaining unit employees by 10% their reduced hours by 15%, and diminished road maintenance and capital improvements. By the end of 2010 its unencumbered cash balance stood at \$1.8 million (compared to more than \$4 million in 2004 through 2008). To some extent the City relies on estate tax receipts. This is an unpredictable source of revenue and is presently under attack in the Ohio legislature. The City also has a 1% income tax with a ½% credit (1% according to the Union) for income earned outside the City. In August of 2010 it attempted to get support for increasing this tax but this levy was defeated.

The only represented employees of the City are full-time patrol officers and sergeants, now numbering 9 and 6 respectively. Both bargaining units went to fact-finding over 2010 wages. That fact-finder recommended a freeze on the annual wage scale for 2010 which was adopted. (City Ex. 15) Also noteworthy in 2010 and influencing bargaining for 2011 was the arbitration of a grievance protesting the City's use of 27 pays for 2010 instead of 26, which reduces the hourly rate and results in smaller bi-weekly checks. The City's practice was upheld by the arbitrator.

III. FINDINGS AND RECOMMENDATIONS

Article XIX, Section 1. Wages

Positions of the Parties

Wages for the police were frozen for 2010 at \$67,309 for Class A patrol officers and at \$76,059 for the sergeant. The Union now wants 1½% for 2011 in order to remain comparable to surrounding communities. It suggests reopeners for 2012 and 2013. In addition it wants to convert annual salary to an hourly rate based on a 2080-hour work year inasmuch as its loss in arbitration over the length of the work year cost the bargaining unit 3.85% of base wages in 2010. It argues in the first place that the City's own consultant determined the city's police wage rates were exactly where they should be. A 1½% increase now would keep Pepper Pike's police

comparable to surrounding communities. Moreover, the City has had a 1% tax rate since 1971 and permits a credit up to 1% for residents working outside the City. Despite this, income tax revenue grew from \$3.7 million in 2008 and is estimated for \$3.8 million in 2010. It anticipates that the City will argue it has a declining unreserved fund balance and a general fund balance at the end of 2009 of \$835,000. Yet its December 8, 2010 estimate was a balance of \$1.3 million. The City may also point to expenditures exceeding revenue, yet it follows an aggressive debt reduction strategy, paying off long term debt over 10 years rather than 15 or 20 years. The Union submits that it is these debt payments that are the cause of the declining balance, not the excess of general fund expenditures over revenue. The Union admits that the City does have the discretion to spend as it sees fit, but there are ample funds to grant the Union's request.

The City's position on wages is a 2½ % reduction for 2011. However, it also offers the police (and all City employees who suffered a wages reduction in 2011) a 50% share in the estate tax fund to the extent that it exceeds the budgeted amount. Its reason for this unusual request is in the recent history of the general fund's unencumbered cash balance. From 2004-08 the unencumbered cash balance exceeded \$4 million. But at the end of 2009 it had dropped to \$835,018. Then, in August of 2010, voters rejected an additional ½% income tax. The City subsequently reduced manpower (a net reduction of 10 employees including layoffs of 5 patrolmen one of which was subsequently recalled), diminished road maintenance and capital improvements, and formed a financial review committee for receiving advice and support from citizens. These efforts resulted in a \$1.8 million cash balance at the end of 2010. The City submits that it cannot cut further because manpower is at the edge of what is needed to perform necessary duties. Without relief, the City predicts, it will be operating at a loss. Moreover, it is concerned about the future of the estate tax because of legislation now pending in the Ohio legislature.

Recommendation of the Fact-finder

The plight of the City is not as dire as it would have the Fact-finder believe. While it is true that the growing cost of health insurance and rejection of a tax increase by the voters required belt-tightening, the City has risen to the challenge, implementing cost-reduction economies such as joining a large self-insurance pool, reducing payroll through layoffs and retirements, and postponing infrastructure projects. The police, too, have sacrificed in the form of fewer officers and frozen wages. More is to be done and there are threats from Columbus for the City, its employees and consequently for public service, but the City has recovered enough to improve police wages by 1 percent effective January 1, 2011. Even Finance Director Sengstock admitted the City could fund a 1½% increase (estimated cost \$22,793) for the police. The Fact-finder recommends the 1 percent figure in the context of what she has recommended for insurance.

Article XIX, Section 2. Longevity

The current longevity benefit is an escalating percentage based on years of service, beginning at 5 years (2%) and rising every 5 years to 3% (10 years), 4% (15 years), 6% (20 years).

Positions of the Parties

The City points out that the current longevity benefit coupled with the pay rate makes its police among the highest paid in Cuyahoga County for a city of its size. Moreover, as wages and years of service increase, this percentage-based benefit grows as well. The City therefore proposes a new schedule for current employees as follows:

- After 7 years - 1%
- After 12 years - 2%
- After 18 years - 3% not to exceed \$2500 in any year.

Additionally, new hires would not be eligible.

The Union submits that this is generally accepted practice in the industry for safety forces. Moreover this is one area where the bargaining unit has favor. As it is an important part of total compensation, the Union opposes any change to this benefit.

The Fact-finder's long experience with safety force contracts supports the Union's claim of a generally-accepted practice, as does the data submitted by both parties from safety force contracts in the region. Moreover, longevity benefits contribute to stabilization of the work force, which, in turn, means the public they serve benefits from officers' accumulated knowledge of local conditions. Another consideration is that current employees have planned with the current schedule in mind. For these reasons, the Fact-finder recommends a two-tier system. Current employees should be grandfathered under the existing schedule. The City's proposal for current employees is recommended for new hires only.

Article XXII, Section 3. Officer in Charge

Since 2004, patrolmen assigned as officer-in-charge for 4 consecutive hours or more have received \$28 for that shift. The Union proposes that this amount be adjusted to reflect more closely the differential between patrol officers and the sergeants which it calculates to be \$4.27 per hour. For an 8-hour shift, then the officer-in-charge should receive \$35. The City accepts the Union's facts and argument but proposes a rate of \$30 per hour.

The Fact-finder agrees that it is time to adjust this compensation to reflect more closely the responsibility and current wage rate of supervision, and so recommends the rate be increased to \$30 per hour for the term of the Contract.

Article XXI. Medical Insurance

Positions of the Parties

The City is self-insured and has a per-family cost of \$22,000 per year (or \$1833 per month for family coverage). Citing SERB data which it says shows a statewide premium average of \$1186 per month, the City calculates its monthly rate to be 54 percent higher than the statewide average. It is looking for relief. Currently the bargaining unit pays a monthly premium

of \$40 single/\$100 family, which the City submits is far below what employees in the private sector contribute. The City proposes to increase employee premium contributions to \$51 single/\$144 family, that covered employees pay 50 percent of the annual increase in premium for medical/drug coverage after the first 5 percent increase capped at \$25/pay period during 2001 and the first six months of 2012.¹ Additionally, it wants to add a deductible (as 75 percent of public plans statewide have) in the amount of \$500 single/\$1000 family; and it wants co-pays to increase from the current range of \$10-\$55 to \$15-75. Further, it would modify Article XXI, Section 2 by paying a \$2000 bonus to any employee who opts out for the first time after February 23, 2011, but during the term of the Agreement.² Finally, the City proposes to offer an optional Health Savings Account plan.

Pointing out that the Union agreed in 2010 to increase employee contributions from \$25 to \$40 (single) and from \$50 to \$100 (family) as well as modest increases in co-pays, the Union is opposed to these increases which it calculates will cost a 20-year patrol officer \$8208 in the first year.

Recommendation of the Fact-finder

The City's health care costs relative to other bargaining units in the state cannot be denied. Even the Union acknowledges this fact and the reasons thereof. During the course of negotiations both before and during fact-finding the City proposed some creative solutions to the problem, but the Union has not been receptive. Additionally, the City asks the Fact-finder to compare what Pepper Pike's police contribute for health care compared to what private sector employees pay. Although this is an appropriate consideration under Ohio law, there is ample data from Ohio's public sector and safety services for a reasonable comparison to be made without looking outside to the private sector.

¹The City's medical insurance renews each July 1.

²This would be in addition to the amounts and terms already contained in that provision.

With respect to comparison cities, the parties offered vastly different groupings. The City's group consists primarily of small, wealthy, unorganized entities in the immediate vicinity of Pepper Pike. The Union's sample ranges from one side of the county to the other and includes cities of diverse wealth and size. Statewide, employee contributions average \$48/\$133 but in the Cleveland area, it is somewhat lower at \$42/\$111. Taking these facts in mind, the Fact-finder recommends employee premium contributions of \$55/\$130 and rejects the City's contingency for anticipated increases. Co-pays, however, should be increased by \$2.00 and deductibles implemented at \$500/\$1000. Finally, the Fact-finder also recommends the optional Health Savings Account proposed by the City.

Article XII. Vacations

The current schedule provides a maximum of 10 days a year in the first 5 years of employment, 15 days a year in the 6th through the 12th year, 20 days in the 13th through the 18th year, and 25 days per year thereafter.

The Union proposes both to accelerate the schedule and to increase the amount of paid vacation as follows:

To end of 5 th year	10 days
Years 6 - 10	15
Years 11-15	20
Years 16-20	25
21 and more	25 + 1/year to a maximum of 30

In addition, it would eliminate the present fractional accrual system in favor of a set yearly amount but would retain the prohibition of carrying unused leave forward from year to year. Finally, it would add retirees to Section 4's list of those who are entitled to receive accumulated vacation pay upon separation.

At hearing the Union claimed it had data on 36 of 38 cities in the Cleveland area and that 26 of these offer six weeks or a better tier (Union Ex. 9). Seven schedules were detailed on the last page of Union Ex. 9 as having a better tier: Beachwood, Highland Heights, Lakewood, Mayfield Heights, Olmsted Falls, Shaker Heights and University Heights. All of these max out

at 5 weeks at an average of 18.4 years. The average maximum vacation of the 38 excluding Pepper Pike is 5.45 weeks.

The City offered its own group for the purposes of comparison. (City Ex. 6) It consists of 29 entities. Leaving out Pepper Pike and Valley View (the latter of which did not report vacation), 2 have a maximum of 20 days, 14 have 25, 10 have 30 and one has 33 for an average maximum of 26.7 days or 5.34 weeks. Thus, by whatever set of communities used for comparison, Pepper Pike is not far from the average maximum number of weeks.

As for acceleration of the existing schedule, of the schedules submitted on Union Ex. 9, the average year to advance to the second step is 6.43 years (which Pepper Pike beats). The average to advance to the third step is 12.29 years whereas Pepper Pike's is 13—neither at the bottom nor the top. And the average to advance to the fourth step is 18.43 years whereas Pepper Pike's is 19 years, again somewhat slower but in the middle of the pack. Therefore it is premature to recommend an improvement in this benefit, either in more days of paid vacation or in earning those days sooner.

Finally, by virtue of having earned vacation during the year of their retirement, the Fact-finder recommends that retirees be added to the list of those who are entitled to receive accumulated vacation pay upon separation.

Duration

As stated above, the Fact-finder recommends a 3-year agreement with annual reopens on wages and insurance.

IV. SUMMARY OF RECOMMENDATIONS

<u>Item</u>	<u>Recommendation</u>
Vacations	No change except with regard to retirees' entitlement to accumulated vacation pay.
Wages	1% retroactive to 1/1/2011
Longevity	New Hires: After 7 years: 1% After 12 years: 2% After 18 years: 3% capped at \$2500 Current Employees: Current schedule
Medical Insurance	Premiums: \$55/\$130 Co-Pays: Add \$2 Deductibles: \$500/\$1000 Health Savings Account: Optional
Officer in Charge	\$30 per hour
Duration	3 years with annual reopeners on wages and health insurance

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact Finder

Cuyahoga County, Ohio
March 14, 2011

CERTIFICATE OF SERVICE

I certify that on the 14th day of March, 2011, I served the foregoing Report of Fact Finder upon each of the parties to this matter by emailing a copy to them at their respective addresses as shown below:

Daniel J. Leffler danielleffler@sbcglobal.net
Robert T. Rosenfeld buzrose@gmail.com

I further certify that on the 14th day of March, 2011, I submitted this Report by emailing it to the State Employment Relations Board at med@serb.state.oh.us



Anna DuVal Smith, Ph.D.
Fact Finder