

STATE OF OHIO

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

FACT-FINDING PROCEEDING

Case No. 10-MED-10-1484, 10-MED-10-1485, and 10-MED-10-1486

Union Township Police Association

and

Union Township Trustees

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Daniel N. Kosanovich

Issued: April 6, 2011

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STATE EMPLOYMENT
RELATIONS BOARD

REPORT AND RECOMMENDATIONS

I. Background

The bargaining units in this case consist of “communication specialists” (dispatchers/clerks) of which there are eleven (11); eight (8) sergeants; and forty-three (43) patrol officers. Each group has a separate bargaining unit. The Association and Township Trustees are signatory to a collective bargaining agreement, which expired by its terms on December 31, 2010. In October of 2010 the parties began negotiations for a successor agreement. The negotiations were truncated and only three (3) sessions were conducted.¹ The work at the three (3) sessions yielded agreement on three (3) minor articles.

Generally speaking, the parties appeared to be inclined to maintain the status quo with regard to all provisions of the prior collective bargaining agreement with the exception of wages and insurance.

In the initial bargaining session, the Union presented the Employer with a proposal. During the course of that session, certain clarifying questions comments were asked concerning the Union’s proposal, but no counter proposal was forthcoming. The second session saw the Employer reject the Union’s proposal and insist on a wage freeze in year one (1) of the contract, a wage freeze in year two (2) of the contract, and a reopener in year three (3) of the contract. Absent the Union’s acceptance of the proposed offer by the Employer, the wage proposal offered by the Township was modified to reflect a concession amounting to a wage decrease of 3.0% in year one (1) of the contract, as well as in years two (2) and three (3). In addition, the Employer proposed a requirement that

¹ There was one mediation session in addition to three bargaining sessions.

employees in the bargaining unit absorb the 15% cost of health insurance premiums or the statutory limit, whichever was the greater. As a result of positional bargaining, the parties rapidly reached the stage of impasse.

On January 20, 2011, the undersigned was appointed the Fact-Finder in this matter. This appointment came after the parties had waived the fourteen (14) day requirement for the conduct of the hearing and the issuance of a report. As a result, the hearing was scheduled to be held on March 22, 2011. Prior to the commencement of the hearing, the sergeant's unit accepted the Employer's proposal of 0% increase in the first two (2) years of the contract and a wage reopener in the third year.

The hearing was conducted on March 22, 2011. As is consistent with the statute and administrative code, the Fact-Finder offered to mediate the dispute between the parties. The parties accepted the opportunity to explore mediation.

The communication specialists determined before the hearing had formally commenced to accept the Employer's offer, as did the sergeants. The agreement reached between the communication specialists and the Employer are incorporated herein as if fully re-written.

Set forth below are the undersigned's recommendations with regard to the patrol officers bargaining unit.

II. Criteria

In compliance with Ohio Revised Code, Section 4117.14(G)(7), and the Ohio Administrative Code, Section 4117-95-05(J), the Fact-Finder considered the following criteria in making the recommendations contained in this Report:

- 1) Past collectively bargained agreements between the parties;

2) Comparison of unresolved issues relative to the employees in the bargaining units with those issues related to other public and private employers in comparable work, giving consideration to factors peculiar to the area and classifications 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 on the normal standards of public service;

4) The lawful authority of the public employer;

5) Stipulations of the parties; and,

6) Such factors as not confined to those above which are normally and traditionally taken into account.

III. Findings and Recommendation

As is reflected in the parties' posturing during the truncated bargaining process and further supported by the arguments advanced, addressing the wage issue is the lynchpin to this problem. The Union is seeking an increase in wages and it rejects the Employer's argument that it is unable to finance the proposal. The Employer, on the other hand, has taken diametrically opposed position. During negotiations, the Employer put on the table for consideration a proposal that would result in a 0% increase in year one (1) of the contract, a 0% increase in year two (2) of the contract, and a wage reopener in year three (3) of the contract. Following a Union rejection of the management proposal, the Trustees substituted a 3.0% wage reduction in each of the three (3) years of the contract. The Union call said proposal retaliatory. The Employer labels it realistic. Given the circumstances, the undersigned will analyze the wage issue first, insurance concerns next, and then, the remaining unresolved issues.

Article 24 Wages

Association's Position

Prefatory Remarks

At the outset of bargaining which began in October of 2010, the Union proposed a 4.5% increase in each year of the three (3) years of the proposed contract. (It was subsequently modified to a proposal of 3.0%, 3.5% and 3.5%) Initially the Township had no response. However, as a counter to the Association's position, the Township offered to maintain status quo with respect to the rest of the provisions of the contract and only address wages. The approach of the Trustees was to offer 0% wage increase in year one (1) of the contract; 0% in year two (2) of the contract; a wage re-opener in year three (3) of the contract with a vague (me too) clause.

In response to the Association's rejection of its proposal, the Township placed an offer on the table which called for a 3% decrease each year of a 3-year contract. The Union asserts that the Employer's posturing and subsequent decrease in the value of the package placed on the table was retaliatory in nature.

The Economic View Supports the Association's Position

The information revealed at the fact-finding hearing clearly reflects that Union Township is an affluent community that has not suffered layoffs of the magnitude of the surrounding counties. The records indicate that the Township invested 7.5 million dollars to purchase a parcel of land for the erection of the building of Jungle Jim's Grocery. In addition, the Township has committed another million dollars to its development. Expenditures such as these suggest a solid financial condition of the Township.

In addition, the evidence gathered at the fact-finding hearing demonstrates that the police and fire units are funded out of a separate safety fund which is supported by

perpetual police and fire levies. Most recently, in the fall of 2009, voters approved another safety force levy.

Moreover, a current snapshot of the police and fire funds show them in positive cash flow positions. It is also significant to note that the Township possesses the second highest bond rating attainable from Moody's.

The Association's position at the fact-finding hearing was to request the fact-finder sanction a 3.0%, 3.5%, and 3.5% increase in wages in years 1, 2 and 3 of the contract. The cost for such an increase is somewhere between \$131,000 and \$152,000, absent roll-up costs. (A 1% increase, absent rollup costs, equals \$34,000. A 3% increase, absent rollup costs, equals \$102,000. A 3.0%, with roll up costs, equals \$132,000. A 3.5%, with rollup costs, equals \$154,000.) The Association produced evidence with regard to comparables in different sections of the state in support of its position.

Under the circumstances, the Union places into consideration a compelling argument for a wage increase.

Township's Position

It is the Employer's position that only wages and insurance should be modified as a result of these negotiations. The remainder of the Collective Bargaining Agreement that has expired by its terms would remain in effect.

In support of its position, the Township directs the undersigned's attention to a projection from 2012-2020 which anticipates the revenue from the police fund in 2012 of \$4,750,000 and expenses of \$4,747,000 with a carryover to 2013 of \$3,000. However, beginning in 2013, there is a projected loss of \$291,470 which continues to increase on an annual basis through 2020. As noted in the Township's brief "in order to keep its bond rating stable, Union Township has always maintained that no salaries for its police

or fire will be paid from the general fund. As a result, it is obvious that decreases need to be made to the expenses of the police fund in order for the police department to survive.

With respect to Article 24, Union Township is proposing decreases of 3% each year of the 3-year contract. Without the cuts in salary proposed by Union Township, Union Township will not be able to continue to provide police services to its residence at the same level it has over the past three (3) years. As the benchmark data from SERB dated February 11, 2011 demonstrates Union Township's compensation to police officers is higher than the average in comparable townships on both entry level and top level ranges. The Township is seeking a recommendation which is essentially calls for a reduction of wages of 3% each year of a 3-year contract.

RECOMMENDATION

The turmoil created by the proposed enormous landscape change in public sector collective bargaining has shaken the very foundation of negotiations. It appears that the foreseeable future will be marked by uncertainty. As a result, the parties to collective bargaining have developed strategical and tactical methods to allow for adjustment when the variables change.

The patrol officers have adopted a historical perspective coupled with snapshots of the current financial picture of the Township, and the near term future as the vehicle to provide the analysis of the issue. This approach demonstrates that collective bargaining efforts in the past have produced wage increases of approximately 4 % without threatening the Township's financial stature. The ability of the administration to successfully secure funding of the police and fire funds through levies is evident from past collective bargaining efforts. Further, it appears that the township has been able to maintain its bond rating and cash position in the past. All of this adds credence to the

Association's position. However, the concept of the future financial condition projected up to eight (8) years into the future must be entertained.

The distilled essence of the Township's position consists of reliance upon projections for eight (8) years into the future. At best "uncertainty" marks the projections. In the worst case scenario, potential collapse is predicted. Another impactful element of fact finding analysis is the concept of comparables. On balance, the Township has the better of the arguments with the respect to comparables. The external comparables weigh in favor of the conclusion that Union Township patrol officers are comfortably located on the scale of earnings. The point to be made is that the Township patrol officers compare favorably to others similarly situated.

A review of the internal comparables is even more persuasive. Communication specialists (dispatchers/clerks) and sergeant two (2) of the safety force units within the Township accepted the Township's proposal on wages at 0%, 0%, and a wage reopener. Moreover, the administrative employees who were non-union have not received wage increases. Firefighters are next on the list of collective bargaining units, but there is no reason to believe the firefighters will exceed the patrol officers based upon review of internal comparables. Under the circumstances, the review of internal comparables tips the scale slightly in favor of the Township with respect to this argument.

Finally, no analysis would be complete without due consideration of the most significant factor impinging upon subdivisions-state funding. Over the years, subdivisions have come to rely upon state funding as a revenue stream. More recently, however, the state has drastically reduced state funding.

Given the uncertainty expressed herein, a cautious approach to making these recommendations is warranted. Therefore, the undersigned recommends the following

with regard to wages: \$500 lump sum in the first year of the contract²; a wage re-opener³ in the second year of the contract with a conditional me too clause which would generate an increase for the patrol officers if any group of Township employees, including, non-union employees receive a wage increase; and a wage reopener with the same me too clause in the third year of the contract.

Article 16 – Insurance

Township's Position

The Township proposes the following changes to the language of Article 16, Section 16.1 which reads: “The Employer must make available to bargaining unit employees who desire it health and hospitalization insurance (i.e. major medical and dental), including supplemental benefits (e.g. prescription drug). The overall Employee contribution to the healthcare benefit shall be 15% of the total program cost or the minimum requirement mandated by state law, whichever is the greater.”

The Employer maintains that as early in the time continuum projected out as 2013 the police fund anticipates a loss of \$291,470. Moreover, it will be impossible to maintain the Township's Moody's rating.

Without the cuts in salary and benefits proposed by Union Township, the Township would not be able to provide police service to its residents in the same way as over the past three (3) years. Benchmark data from SERB dated February 11, 2011 shows that Union Township's compensation to police officers is higher than the average comparable townships on both entry level and top level ranges.

² The lump sum payment does not roll into the base rate, and the Township certainly has sufficient funds to finance this portion of the recommendation. However, it does provide an earnings enhancement to offset the potential increase in health care costs absorbed by the employees.

³ The wage re-opener is designed to allow the parties to engage in meaningful negotiations after the turmoil has subsided.

Association's Position

At the fact-finding hearing, the Association offered the following modification of Article 16 – Insurance, Section 16.1: “The Employer shall make available to bargaining unit employees who desire it healthy and hospitalization insurance (i.e., major medical and dental), including supplemental benefits (e.g., prescription drug), on the same basis as provided to non-bargaining unit employees (i.e. all employees not in this bargaining unit). **Effective January 1, 2011, bargaining unit employees shall not be required to contribute more than 10% of the monthly premiums for health and hospitalization insurance.**”

The following argument and information was gleaned from the statement of position submitted by the Association at the fact finding hearing: Currently, no employees in Union Township pay premiums for their basic health coverage. The Employer pays 100% annual insurance premiums on behalf of their employees. Historically, employees in this bargaining unit have been on the same insurance plan and subject to the same insurance conditions as all non-bargaining unit employees in Union Township for at least twenty (20) years.

The Association's initial proposal would have required the parties negotiated over the changes in the insurance plan. In an attempt to avoid impasse on the insurance issue, the Association withdrew the proposals which include the insurance plan details. Instead, the Association proposed to the fact-finder that the insurance and premium rates offered to the bargaining unit members remain tied to insurance plan rates the Employer provides the Union Township employees. Additionally, the Association has proposed to

incorporate the 10% employee contribution to insurance premiums proposed by the Employer.

In summary, the Employer does not need the language it proposes to initiate employee premium contributions. Current language allows the Employer complete discretion to determine the level of insurance premium and benefit. Thus, the fact-finder is urged to adopt the Association's position on insurance.

RECOMMENDATION

The language of the recently expired contract allowed the Employer to require bargaining unit employees to contribute to the cost of health care, including premium contributions. The Trustee's proposal in this instance would set a floor for a minimum of a 15% contribution by each employee toward health care program costs.

The Trustees have not provided a compelling enough argument to warrant imposing a mandatory minimum contribution of 15% toward the cost of the total health care package. If the Trustees' proposal were to be adopted, it would serve to place an enormous burden upon the bargaining unit employees, without a corresponding wage structure to support the undertaking.

It is universally recognized that collective bargaining agreements are the product of the give and take which occurs in negotiations. The recommendation contained herein regarding wages is coupled with the recommendation set out herein regarding insurance and they are designed to protect the patrol officers' earnings capacity while acknowledging the need to share the burden of the cost of providing health insurance.

Therefore, the undersigned recommends that the parties adopt the Association's proposal concerning insurance. The recommendation is incorporated herein as if fully rewritten herein.

Remaining Unresolved Issues.

The Union came to fact-finding with open issues which included Article 13 – Hours of Work and Overtime; Article 16 – Insurance; Article 18 – Vacation; Article 19 – Sick Leave; Article 24 – Wages; Article 30 – Tuition Assistance; Article 34 – Duration. In addition, the Union was initially prepared to go forward on Article 1 – General Procedure, Article 6 – FOP; Article 7 – Discipline; Article 21 – Leaves of Absence With Pay; Article 23 – Safety; and Article 29 – Drug and Alcohol Testing. For purposes of the fact-finding hearing, the Association withdrew its proposals dealing with Article 5, Article 6, Article 7, Article 21, Article 23, and Article 29. Recommendations have been issued in this report addressing Articles 16 and 24, which leaves Articles 13, 18, 19, 30, and 34 with which to be dealt.

Article 13 – Hours of Work and Overtime

The Association proposed a modification to three (3) sections of Article 13. Section 13.3(comp time); Section 13.8; Section 13.10 are also included in the proposal.

The Township's position is to maintain the status quo for it is absolutely critical to provide optimum protection to the public.

RECOMMENDATION

Based upon the strength of the analysis set forth above with respect to Article 16 and Article 24, the undersigned recommends the parties maintain a status quo in regard to Article 13.

Article 18 – Vacation

The Association's impetus for its proposal on vacation enhancement stems mainly from the communication specialists bargaining unit. As a result of the agreement between the Trustees and communication specialists the issue with regard to vacations has been compromised.

The Trustees take the position that the issue has been compromised by virtue of the agreement between the parties and that the matter is subject to an unfair labor practice charge.

RECOMMENDATION

Based upon the arguments set forth in the analysis above with respect to Article 16 and Article 24, the undersigned recommends the parties maintain a status quo. Also, this recommendation was made because this issue was indeed compromised.

Article 19 – Sick Leave

The Association proposed an increase in the sell-back benefits.

The Trustees take the position that the proposal is unwarranted and expensive.

RECOMMENDATION

Based upon the arguments set forth in the analysis above with respect to Article 16 and Article 24, the undersigned recommends the parties maintain a status quo.

Article 30 – Tuition Assistance

The Association proposed an increase in tuition assistance afforded employees.

The Trustees oppose the increase as unwarranted and too expensive.

RECOMMENDATION

Based upon the arguments set forth in the analysis above with respect to Article 16 and Article 24, the undersigned recommends the parties maintain a status quo.

Article 34 – Duration

At the fact finding hearing, the parties tacitly agreed that the length of the collective bargaining agreement should be three (3) years.

RECOMMENDATION

The undersigned recommends a three (3) year agreement as reflected in the Association's proposal. Said proposal is incorporated herein as if fully rewritten.

IV. Certification

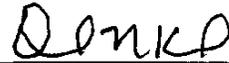
The fact finding report recommendations are based upon the evidence and arguments presented to me at a fact finding hearing conducted on March 22, 2011. The recommendations contained herein were developed in conformity with the criteria for fact finding found in Ohio Revised Code 4717(7) (a-f) and the Associated Administrative Rules developed by SERB. All tentative agreements reached by the parties prior to the fact finding hearing are incorporated herein by reference as if fully rewritten.



Daniel N. Kosanovich, Fact Finder

V. Proof of Service

This fact finding report was mailed electronically to R. Jessup Gage, 30 Garfield Place, Suite 915, Cincinnati, Ohio 45202 at jessupgage@hllmlaw.com, and Lawrence E. Barbieri, 5300 Socialville-Foster Road, Suite 200, Mason, Ohio 45040 at lbarbieri@smbplaw.com on April 6, 2011. Hard copies were mailed to both parties and J. Russel Keith, General Counsel & Assistant Executive Director, SERB, 65 East State Street, 12th floor, Columbus, Ohio 43215-4213.



Daniel N. Kosanovich, Fact Finder

April 6, 2011

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