

FACT-FINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

November 29, 2011

In the Matter of:

City of Richmond Heights)

and)

Ohio Patrolmen's Benevolent Association)

2010-MED-11-1680

Case No. ~~10-MED-10-1680~~

Police Dispatchers

APPEARANCES

For the City:

Marc J. Bloch, Counsel
Gene Rowe, Chief of Police

For the Union:

Jeff Perry, Business Agent
Mary Delgado, Union Representative

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of Richmond Heights and the Ohio Patrolmen's Benevolent Association. The city is located in the eastern part of Cuyahoga County and had a population of 10,546 in 2010. The union represents one clerk and four dispatchers in the police department.

On February 22, 2010, the parties concluded negotiations on a successor agreement to one which expired on December 31, 2009. In the contract, they agreed to a wage freeze for 2010 and modified the existing High Deductible Health Plan/Health Savings Account Plan so that dispatchers would be required to pay \$250 of the \$2,000 HSA for single coverage and \$500 of the \$4000 HSA for family coverage. The parties also agreed to a reopener for "all subject matters" for the second and third years of the agreement with the stipulation that the negotiations would be subject to the provisions of Section 4117.14 of the Ohio Revised Code.

Pursuant to the reopener, the parties met to negotiate on two occasions. However, when they were unable to reach agreement, the dispute was submitted to fact-finding. The Fact Finder was notified of his appointment on September 13, 2011. A fact-finding hearing was conducted on November 2, 2011. When attempts to reach a mediated settlement failed, this report was prepared.

The recommendations of the Fact Finder are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;

- (c) The interest and welfare of the public, and 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

Ability to Pay

One of the key statutory criteria is the ability to pay. It is indisputable that the city faces a difficult financial situation. The city's unions have recognized its plight and responded by agreeing to wage freezes in 2010, 2011, and 2012 as well as accepting other concessions.

The city's financial problems became apparent in 2008. The city claims that they were the result of the nationwide economic crisis and wage increases awarded by a Conciliator in excess of its ability to pay. The IAFF and Local 1099 agreed to concessions and when the fire and police unions refused to accept concessions, they experienced layoffs.

The city's unfortunate circumstances were revealed in a state audit for 2007-2008. According to the city, the audit revealed negative budgetary fund balances in seven accounts, totaling \$1.9 million. The audit for 2009-2010 has not been completed.

While the city has resolved its audit deficiencies, its financial outlook remains difficult. The city's 2011 budget indicates General Fund revenues of \$7,103,710 and expenditures of \$7,095,822 with an ending balance of only \$122,017. (City Exhibit E,

page 45) The budget's three-year forecast shows General Fund revenue increasing slowly to \$7,282,787 in 2015 compared to \$7,226,076 in expenditures. The ending balance is projected to increase to \$377,284 or 5.2% of General Fund expenditures. (City Exhibit E, page 149)

ISSUES

The parties submitted three issues to the Fact Finder. For each of the issues, he will set forth the positions of the parties with respect to the issue and summarize the arguments and the evidence they presented in support of their demands. He will then offer his analysis and recommendation.

1) Article 14 - Salary Schedule, Section 14.7 - Proficiency Allowance -

The current contract provides for an annual allowance of \$1250 for participation in the Cooper Fitness Protocol and for the maintenance of LEADS, CRIS, CCH, and AED certifications. It also establishes an annual fitness allowance of \$750 for employees who rank in the 50th percentile or higher on the Cooper Fitness Protocol. The city proposes paying both allowances in 2011 but seeks to eliminate the \$1250 certifications allowance in 2012 and to reduce the fitness allowance to \$500. The union agrees to the elimination of the certifications allowance in 2012 and the reduction in the fitness allowance to \$500 but wishes to include a provision granting \$750 to any employee who achieves consecutive passing scores on the Cooper Fitness Protocol.

Union Position - The union argues that its proposal ought to be recommended. It acknowledges that the city has "financial issues" and that the police have agreed to the

city's demand. The union states, however, that since only one dispatcher attempted to pass the test in 2011, its proposal will not "break the bank."

The union contends that a comparison of the dispatchers to the other bargaining units supports its position. It indicates that "the amount of money that would be taken away from the dispatchers is much greater than that taken away from the Police, Fire, or the ranking officers." (Union Pre-Hearing Statement, page 4) The union also claims that the insurance changes the city is seeking will have a greater impact on the dispatchers than the other units.

The union maintains that its proposal makes economic sense in the long run. It reports that employees who are in better shape are in better general health and are less likely to smoke or have diabetes. The union suggests that healthier employees will reduce the cost of insurance and lead to better attitudes.

City Position - The city opposes the union's demand. It wishes to have the same fitness allowance for all of the employees in the police department.

Analysis - The Fact Finder can find no justification for a larger fitness bonus for dispatchers than other employees in the police department. However, he does believe that since only one dispatcher qualified for the fitness bonus in the past, a larger bonus for dispatchers who meet the required standard in consecutive years may encourage them to more fully participate in the program.

Recommendation - The Fact Finder recommends the following contract language:

The City shall provide a proficiency allowance for all members of the bargaining unit as follows:

a. Employees shall receive an automatic payment of \$1,250.00 for 2011 only as a proficiency allowance for participation in the Cooper Fitness Protocol, maintenance of LEADS, CRIS and CCH certification as required, and maintaining AED certification as required. No payment shall be made under Section 14.7(a) in 2012.

b. Employees may receive an additional annual allowance of \$500.00 effective November 1, 2011, by achieving the 50th percentile in the Cooper Fitness Protocol, specifically, the “Single Standard General Population Norms.” Employees who achieve consecutive passing marks will receive \$750 annually. Such test shall consist of the following six (6) events:

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| 1.5 mile run | Sit and Reach |
| Push-ups | Leg Press |
| Sit-ups | Bench Press |

The highest scores on five (5) events will be used to compile an average final score. The physical test shall be given twice (2x) per year with a minimum of three (3) events offered.

c. Payment of the proficiency allowance shall be made on the following dates:

1. March 1st for the 2011 automatic allowance specified in (a) above.
2. October 6th for contract years 2011 and 2012 for those who have earned the \$500.00 allowance by passing the criteria in paragraph (b) above.

2) Article 16 - Holidays, Sections 16.3 & 16.4 - Holiday Pay - The

current contract lists 11 holidays. Under the contract, dispatchers who work on Martin Luther King Day, Good Friday, or their birthday holiday, receive holiday pay plus time and one-half for working on the holiday. Dispatchers who work on New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Christmas Eve, Christmas Day, or New Year’s Eve receive one day for the holiday, one and one-half days for working, and an additional day pursuant to Section 16.4. Dispatchers who do not work a holiday receive holiday pay for the day.

The parties propose some changes to the current arrangement. The city wishes to pay dispatchers for the 11 holidays on the last pay date in November and to eliminate time and one-half for working on a holiday. It also demands the elimination of the additional day granted under Section 16.4 for working on one of the eight specified named holidays. The union agrees to the elimination of time and one-half for working on a holiday but wishes to retain the additional eight hours of pay dispatchers get for working on any of the eight holidays listed in Section 16.4.

City Position - The city argues that its position is justified. It states that the additional eight hours of pay for working on any of the eight holidays listed in Section 16.4 “is not directly in the current collective bargaining agreement [but] ... is a ‘past practice.’” (Employer Pre-Hearing Statement, page 7) The city complains that the practice results in a dispatcher receiving triple time and one-half for working on the eight specified holidays. It insists that the dispatchers should be treated in the same manner as other employees in the police department.

Union Position - The union argues that its position should be adopted. It charges that the dispatchers have long enjoyed the extra eight hours of pay for working on the eight holidays listed in Section 16.4. The union states that the city is “attempting to take away a benefit above and beyond those that were taken from the other safety forces.” (Union Pre-Hearing Statement, page 6)

The union contends that the extra holiday pay is justified. It suggests that “it was introduced as a way to give the dispatchers a little extra income.” (Ibid.) The union complains that equal percentage wage increases have continuously expanded the dollar

differential between the dispatchers' pay and the pay of other employees in the police department.

Analysis - While the Fact Finder understands the union's argument that the dispatchers are being asked to give up more than other employees, he cannot recommend the union's position. First, it is clear that the only reason the dispatchers are being asked to give up more is because they have enjoyed a benefit in the past that other employees have not had. Second, the city's attempt to have holiday pay the same for all of the employees in the police department is not inappropriate and is the situation in most police departments. Third, it is very unusual for dispatchers to be paid triple time and one-half for working on a holiday.

Recommendation - The Fact Finder recommends the following contract language:

Section 16.1. Each member of the bargaining unit shall receive the following eleven (11) paid holidays:

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|--------------------------------|-------------------------|
| 1. New Year's Day | 7. Thanksgiving Day |
| 2. Martin Luther King, Jr. Day | 8. Christmas Eve Day |
| 3. Good Friday | 9. Christmas Day |
| 4. Memorial Day | 10. New Year's Eve |
| 5. Independence Day | 11. Employee's Birthday |
| 6. Labor Day | |

Section 16.2. Eleven (11) holidays in lieu of time off shall be paid to qualified employees on the last pay date in November. The amount paid will be prorated on the same basis as the overtime pay.

Section 16.3 Each member of the bargaining unit shall receive one (1) additional personal day. Such day shall not be considered a "holiday" and shall not be subject to the rules and regulations of such regular holidays. This personal day may be taken on an as-needed basis with prior approval of the Chief and/or his designee. This day must be used by December 15 or it will be paid.

3) Article 22 - Insurance, Section 22.1 - Health Insurance - The current contract provides for a Medical PPO plan and a Medical PPO Health Savings Account plan. (City Exhibit C) The HDHP/HSA plan has a \$2000 individual and a \$4000 family deductible and employees are required to contribute to their HSAs \$250 for single coverage and \$500 for family coverage. The city demands the dispatchers' contributions be increased to \$500 and \$1000. The union wishes to retain the current contribution levels. It also proposes "a co-pay on drugs rather than have them come straight from the HSA money." (Union Pre-Hearing Statement, page 8)

City Position - The city argues that settlements reached with the other unions should be extended to the dispatchers. It points out that the police and fire unions have agreed to pay the increased employee HSA contribution effective January 1, 2012. The city adds that it has a tentative agreement with Local 1099 with the same effect.

Union Position - The union opposes the city's attempt to double the employee HSA contribution. It acknowledges that employees have been paying more for insurance for quite some time but suggests that the rate of increase has accelerated. The union claims that "the growth rate is just too fast to be fair." (Union Pre-Hearing Statement, page 8)

Analysis - The Fact Finder must recommend the city's position. Although dispatchers earn less than police and fire fighters in every city, they almost always have health insurance plans that are identical to those higher paid employees. It should also be noted that the service employees, who generally do not earn as much as police officers and firefighters, have tentatively agreed to the city's health insurance proposal.

Recommendation - The Fact Finder recommends the following contract

language:

Effective upon ratification, the City shall provide the benefit plans in effect for bargaining unit employees for 2011, as more fully described in the "Benefit Summary for the Employees of the City of Richmond Heights" for 2011. Effective January 1, 2012, employees shall be responsible to pay, depending on their family status, either \$1000 of the \$4000 family Health Savings Account or \$500 of the \$2000 single Health Savings Account.

4) Article 33 – Term of Agreement/Negotiations Procedure, Section

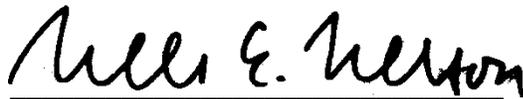
33.1 -Duration - The current contract has a term of a term of three years. The township proposes that the successor agreement be for three years beginning on January 1, 2010.

The union did not oppose the township's proposal.

Recommendation - The Fact Finder recommends the following contract

language:

This agreement shall be effective as of January 1, 2010, and shall remain in full force and effect until December 31, 2012.



Nels E. Nelson
Fact Finder

November 29, 2011
Russell Township
Geauga County, Ohio