

Received Electronically @ SERB June 21,2012 8:30am
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-finding Between:

Port Clinton Police Department : SERB Case No. 11 MED-12-1713,
The City of Port Clinton, Ohio 11 MED-12-1712; 11 MED-12-1711

And : Fact-finding Report and Recommendations

The Fraternal Order of Police, : Margaret Nancy Johnson
Ohio Labor Council, Inc. Lodge #79 Fact-finder

This matter came on for hearing on June 1, 2012, in a conference room at the City Building, in Port Clinton. Margaret Nancy Johnson, appointed by the State Employment Relations Board, hereinafter "SERB," presided as fact-finder in the bargaining impasse between the parties. This Report and Recommendations for the settlement of contract issues remaining in dispute is now issued in accordance with the statutory requirements set forth in the Ohio Collective Bargaining Act.

The City of Port Clinton, hereinafter "City" or Employer," was represented in these proceedings by John J. Krock, Vice-President, Clemans, Nelson and Associates. Also present on behalf of the City were Tracy Colston, Safety Services Director, and Rob Hickman, Chief of Police. Brenda Goheen, Staff Representative, argued the issues on behalf of the Fraternal Order of Police, hereinafter "FOP" or "Union." Bargaining Committee members present at the hearing included Bruce M. Szilagy, Joshua A. Nelson, and Mark L. Anderson.

The bargaining units covered by the Collective Bargaining Agreement negotiated by the parties include six (6) Police Officers, four (4) Sergeants, and six (6) Dispatchers. According to the pre-hearing statement of the City, the parties have agreed to multi-unit bargaining and all proposals are the same and apply to all units.

Prior to convening, both parties issued timely pre-hearing statements setting forth the issues in contention and respective positions on those issues. Each party had the opportunity to examine and cross examine witnesses and introduce into the record documentary evidence supportive of arguments advanced on unresolved contract language. In the course of the proceeding the parties resolved contested language on Article 19, Vacancies and Promotions, and a Letter of Understanding, and those issues were removed from the consideration. All contract language upon which the parties reached Agreement are included herein as Appendix A. Issues remaining in dispute are set forth hereinafter.

Issues

The unresolved issues are Article 8.1 Intent of Overtime; Article 8.5 Voluntary Overtime; Article 16, Insurance; and Article 22, Wages.

Criteria

Pursuant to Ohio Revised Code Section 4117.14 (G)(7), the following criteria have been considered when issuing the recommendations set forth hereinafter:

1. Past collectively bargained agreements between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees in 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 on the normal standards of public service;
4. Lawful authority of the public employer;
5. Stipulations of the parties; and
6. Such factors not confined to those above which are normally and traditionally taken into consideration.

Positions of the Parties

ARTICLE 8 Hours of Work

Section 8.1 Intent of Overtime

City Proposal

The City proposes language in Article 8.1 that would prohibit employees on sick leave from working any overtime hours until they have reported back to their next scheduled shift. The same language has been included in the labor agreement between the City and the Teamsters, representing service, maintenance, technical, and clerical employees.

Union Response

Insofar as the Company has not demonstrated any need for changing contract language, the Union seeks retaining current contract language

Section 8.5 Voluntary Overtime

City Proposal

As the parties differ in their interpretation of how overtime is to be offered, it is necessary to clarify the language set forth in Article 8, Section 8.5(A). Based on the well established practice in this matter, the City believes that overtime should be offered based upon how long an employee has worked in their current classification.

Union Proposal

The Union argues that overtime should be based on road seniority. Since overtime is normally performed by Patrol, the Union contends that offering overtime based on road seniority is the most equitable.

ARTICLE 16 Insurance

Union Proposal

The Union proposes that the employee share of the health insurance premium costs be raised to 15% and the employer continues to contribute 100% of out of pocket expenses; alternatively the FOP proposes the language recommended by the fact-finder in negotiations with the Teamsters unit. One of the objections of the Union to the proposal of the City is that rather than consistent deductions from paychecks, the employee incurs a large deductible.

City Proposal

The City proposes incorporating the same health insurance language for this unit that was agreed to by the Teamsters. It is also the same language that will be implemented for all non-bargaining unit employees effective June 1, 2012. All City employees should be receiving the same health benefits at the same cost rather than the Union insulating its members from increasing costs. All employees should assume some responsibility for maintaining well-being as well as for the costs associated with health care needs.

The City cannot continue to pay 100% of an employee's out of pocket expenses. Currently, the police represent 42% of the health insurance costs incurred by the City. Accordingly, the plan the City proposes includes employee participation of a network deductible at \$250 for single coverage and \$500 for family effective June 1, 2012; \$500 single and \$1,000 family coverage, effective June 1, 2013; and \$750 for single and \$1,500 for family coverage effective June 1, 2014. Additionally, the City proposes an employee/employer premium participation of 11%/89% in 2012; 12%/88% in 2013; and 13% /87% in 2014. As part of its insurance language, the City proposes a health care committee for the purpose of evaluating the current health care plan and recommending changes so as to keep costs reasonable.

ARTICLE 22 Wages

City Proposal

Because of decreasing revenues and an uncertain financial recovery, the City proposes a wage freeze for the first year of the contract and wage re-openers for the second and third year of the Agreement. The City passed its 2012 budget on the assumption that revenues and expenditures would remain stable. Yet, the revenue for 2012 is projected to be below 2008 revenue, with income tax revenues affected by 13.1% unemployment in Ottawa County, among the highest in the state. Although income tax revenue for 2012 is expected to increase slightly, it remains below the 2008 level.

Indeed, in 2013, the net loss to the general fund revenue could be in excess of \$200,000. Total revenue declined from \$3,487,581 in 2007 to \$3,430,000 in 2011; General Fund carry over decreased in the same time period from \$1,041,680 to \$725,000 (See Employer Exhibit Q). At the same time as revenue has been declining, total expenses for the City have been increasing (Employer Exhibit Q). Indeed, in 2008, 2009 and 2010, general fund expenses exceeded revenue (Employer Exhibit T). While the Police budget has increased \$334,110 in the last five years, the General Fund revenue for the same time period has decreased \$57,581 (See Employer Exhibits U and Q).

Increases in wages paid to Police Officers and Dispatchers in the City exceed increases in the Consumer Price Index as well as increases to the median household incomes in the City and in comparable jurisdictions (Employer Exhibit V).

Wages proposed by the City take into account anticipated reductions in revenue. It is a fair and reasonable approach to a challenging economic environment in which public entities are required to curtail costs while income sources are reduced or eliminated.

Union proposal

The FOP proposes base rate increases of 3% for each year of the contract, which the City can well afford to pay. As it should, the City budgets conservatively and in 2011 actual police expenditures from the General Fund were \$271,806 less than budgeted (See Union Exhibit 9). Similarly, in 2011 estimated income to the Total General Fund was less than actual receipts by almost \$300,000 (See Union Exhibit 10). Indeed, in spite of the challenging economic times, the City has done quite well.

The carryover the City maintains in its General Fund exceeds the 10% that is generally recommended by bonding agencies. Subsequent to the national recession, the City has successfully managed to maintain revenues in excess of expenditures (see p. 13, Union Exhibit 11). Based upon its financial data, the City cannot allege an inability to pay an appropriate wage increase for this unit.

In comparing wages paid to Police Officers and Sergeants with the wages paid by other cities, the City is on the lower end (Union Exhibit 12). The City has not kept up with wages paid in comparable jurisdiction. Of seven similar cities, wages paid to Police Officers rank third from last; of ten cities, wages paid to Sergeants by the City also rank third from the bottom.

Based upon past negotiations, the 3% sought by the Union is entirely reasonable. As a statutory criterion, past collective bargaining agreements ought to be taken into consideration when assessing wages. Considering comparables as well as past agreements, the 3% increase sought by the Union for each year of the Agreement is appropriate.

Discussion

Located on the Lake Erie coast, the City is a tourist destination, having seasonally adjusted business activity. Based on 2010 census data, the City has a population of 6,056 (see City Exhibit W), with a median household income of \$41,996 (See City Exhibit V). The City negotiates labor contracts with two Unions: Teamsters Local 20 which includes approximately 19 employees in service, maintenance, and technical positions, and FOP Lodge 79, providing law enforcement services for the community.

Having reached an impasse in their contract negotiations, the City and the Teamsters engaged in fact-finding. Following rejection by the City of the Recommendations of the Fact-finder, the Teamsters and the City entered into an Agreement for the terms of a successor contract, provisions of which have been submitted into evidence in this proceeding (See Employer Exhibit 7).

Article 8 Hours of Work and Overtime

Section 8.1 Intent of Overtime

The City proposes adding language which would require an employee on sick leave to report back to work prior to being eligible for overtime, a contract modification to which the Union is opposed. For the reasons which follow, the fact-finder concurs with the Union and does not recommend the proposed change.

First, the fact that the Teamsters have agreed to the language does not bind the FOP to the same provision. As will be discussed more fully elsewhere in this report, internal comparability is a persuasive argument, but it does not bind another unit, especially when there are reasons for different language. As argued by the Union, since the work schedules for this unit are not the same as those of the Teamsters unit, contractual language addressing overtime opportunities need not be uniform. Police units work non-traditional hours, providing twenty-four hour law enforcement services throughout the year, including holidays. Differing hours of work justify distinctions in overtime assignments and requirements.

Second, a well-recognized precept in impasse proceedings is that the party advocating modification must demonstrate the need for change in the contract language. In the absence of evidence explaining why change is proposed, current contract language will be deemed appropriate. The parties have previously negotiated and agreed upon overtime provisions and there is no indication those provisions have proven inadequate or inapt. Indeed, in the absence of persuasive evidence that change is warranted, the statutory criterion of past collectively bargained agreements would sustain the position of the Union in this matter.

As further argued by the Union, should there, in fact, be issues with sick leave usage by members of the bargaining units, the current contract has language to address abuses or misuses. The way to correct such matters is not by denying overtime opportunities to the entire unit, but by pursuing appropriate measures to curtail abuse.

On the matter of Voluntary Overtime, the fact-finder recommends current contract language.

Section 8.5 Voluntary Overtime

The second overtime provision in contention pertains to how overtime is assigned and both parties assert current contract language needs clarification. Arguing for classification seniority, the City contends road overtime has always been assigned based upon time in the classification. The Union seeks road seniority for road patrol overtime, maintaining that the process worked in the past only because of the number of available senior police officers. In the absence of an overtime equalization among the multiple units, the Union maintains that road seniority is the only fair method to assign overtime.

Evidence elicited does not indicate the overtime language dispute arose because of an inequity in practice. Rather, the Chief of Police stated that, as had been the practice for twenty-seven years, he was offering overtime based upon classification, and that the matter would be resolved at negotiations. Undisputed testimony, then, establishes the long term practice has been to assign overtime on the basis of classification. The Union contends continuing the practice will work an inequity, depriving Sergeants of road

overtime opportunities. As there is “plenty of overtime” to go around, the Union seeks contract language awarding overtime on the basis of road seniority.

Should the concerns of the Union materialize and the inequity it predicts comes to pass, the issue can be addressed in subsequent negotiations. For the purposes of this contract impasse, however, the fact-finder recognizes there are three separate units. While the Police Officers, the Sergeants, and Dispatchers negotiate together and are law enforcement units, these are, in fact, three classifications with differing job demands and requirements. Overtime opportunities in one of the classifications need not be made available to an employee in a different classification. When choosing to bid on a job opening in a different classification, the availability of overtime is a factor one typically evaluates. Overtime opportunities should be an employee consideration and not an employer obligation. The fact-finder recommends the language proposed by the City.

Article 16 Insurance

Even though the parties agree upon uniformity among employees in insurance plan coverage, they differ as to the allocation of costs of that plan between employees and the City. Currently the City reimburses 100% out of pocket expenses for this unit, with employees contributing towards the premium costs. Arguing that the City can no longer afford to pay the 100% out of pocket medical expenses and that employees must “take ownership” of insurance usage, the City proposes an increase in the premium share and employee participation in out of pocket expenses. The City points out that the terms it is now proposing have already been agreed to by the Teamsters unit and will be implemented for all non-bargaining unit employees.

In its pre-hearing statement the City asserts that “everyone should pay the same” for insurance and that this unit should not be permitted to “insulate” itself from rising costs, forcing the Employer to absorb the same. Yet, undisputed evidence submitted by the Union (Union Exhibit 6) indicates that, in fact, this unit has been paying more for its insurance coverage than other City employees. Capped at \$115 per month, the monthly deduction for this unit for coverage for the employee plus one has been \$15 more than the deduction for other city employees with like coverage. Thus, while the plan is and should be the same, employee costs can and have, in the past, differed. With bargaining units, health insurance is a matter of negotiation, and as a consequence, respective participation in health care costs may vary.

While the fact-finder concurs that a significant difference in employee contributions has the potential for undermining employee morale, subtle differences do occur. As the consequence of the bargaining process, distinctions in insurance provisions are negotiated and employee costs may vary in the give and take of bargaining.

In support of its position on insurance, the Union contends that employee contribution is less the issue than how the out of pocket expenses are deducted. Regular and routine deductions from a paycheck are less unsettling to an employee than a payment of \$1,500, as proposed by the City for a family deductible in 2014.

Although the fact-finder understands the argument made by the Union, she also finds the gradual implementation of increasing deductibles is intended to address this concern. Only in the third year of the agreement is an employee confronted with a potential out of pocket expense in excess of \$1,000. As with all household expenditures, insurance

expenses, including health care emergencies, can and should be anticipated and budgeted over the long term.

While this fact-finder has read the insurance recommendations issued earlier in the matter involving the Teamsters and now offered by the Union as an alternative in this proceeding, the earlier report and recommendations were rejected by the City. Recommending the same in this proceeding serves no purpose. The objective of fact-finding is to try to reach agreement, and recommending something a party has already rejected does little to further that objective.

Given the fact that insurance plans are so varied in cost and component, using external comparability for insurance is a challenge. A review of the SERB 2011 Report of the Cost of Health Insurance in Ohio's Public Sector (Union Exhibit 14) illustrates the complexity of the issues. A conclusion that can be made, however, is stated on page 17 of the Report which reads: "The frequency of plans with no required deductibles in 2011 has decreased since 2010. Currently only 15% of plans statewide do not require any deductible, compared to 25% of plans requiring no deductible in 2010." In its Summary of Key Findings, the Report notes that "only 10.5% of plans do not require employees to pay a deductible or co-insurance for medical coverage" (p. 3). Thus, requiring employee participation in the deductible is consistent with both internal and external comparability. The unresolved question is the amount of the employee share in the deductible.

Although the framework of the plan should be similar, employee participation may vary. As this unit is coming off of a contract in which it paid more in premium contributions, it is not unreasonable that its required deductible in this contract be less than for employees in the other bargaining unit, and the criterion of bargaining history would sustain such a variance.

Accordingly, the fact-finder recommends that an employee network deductible shall be \$200 for single coverage and \$400 for family coverage effective June 1, 2012, with the monthly employee premium share of 11%; an employee network deductible of \$375 for single coverage and \$750 for family coverage effective June 1, 2013, with the monthly employee premium share of 12%; a employee network deductible of \$550 for single coverage and \$1,100 for family coverage with an employee premium share of 13% effective June 1, 2104. In addition, the fact-finder recommends the establishment of a health care committee (HCC) as offered by the City.

Wages

Ability to Pay

The City contends that its current financial situation precludes a wage increase for 2012 and warrants wage reopeners for 2013 and 2014. Yet, the City has reached an agreement with the Teamsters for a three year contract that includes a freeze for year one, and 2% and 2% increases in 2013 and 2014. As a point of distinction between these units and the Teamsters unit, the City points out that the Teamsters are not paid exclusively from the General Fund, as are the police units, and that whereas revenue to the General Fund is flat, the City is implementing increases in water and sewer "rates." Statutory ability to pay, however, is not solely determined by the fund from which a bargaining unit is paid or upon the willingness of an employer to increase "rates" for services, but on a comprehensive overview of the financial situation of the employer.

Considering revenue levels, there is no dispute that public sector entities in Ohio have been challenged by reductions and eliminations. Reserves have been affected both by legislative enactments and also by economic forces. Even so, current ability to pay for collective bargaining purposes cannot be determined by comparing levels of revenue/expenditure in 2011 to those of 2008.

Rather than the excesses of 2008, subtle trends in the aftermath of the recession are more informative as to fiscal soundness of a public employer in 2012. In this regard, the fact-finder notes that in 2011, revenue exceeded expenses; moreover, 2011 revenue exceeded revenue in both 2009 and 2010. Additionally, from 2010 to 2011, the General Fund carry-over grew by \$130,000.

There is very little in the financial data submitted for her review which would indicate that the City lacks the ability to make an appropriate and reasonable wage adjustment for the members of this bargaining unit. This is especially true when the City is requesting its employees to increase contributions to health care costs.

Comparability

To sustain its 3% annual increase, the Union contends this unit has not kept up with comparable police units. Acknowledging that comparables are challenging to find for this police unit, the Union has submitted a chart (Union Exhibit 12) listing top wages of Police Officers and Sergeants to demonstrate a disparity in wage rates.

Comparables are difficult to analyze as communities, even within the same county, may vary in terms of population, median household income, income tax revenues, real estate valuations. Moreover, the wage rate is only one component of the economic package, with perquisites such as uniform and longevity providing enhancements to the base rate. In the absence of further data, the fact-finder cannot conclude that the rates paid to this unit are so substantially below neighboring communities as to justify the 3% increase sought by the union.

Upon analysis of the data that has been presented, the selected cities do not justify the rate sought by the Union. There will always be a high and a low wage, with differing components and benefits. Evidence submitted by the Union indicates the City is in the low to mid range for sergeants and police officers in terms of the wage rate, but this is without any consideration given to other elements of the wage package or to the characteristics of the comparable jurisdiction.

Neither party offered the fact-finder any evidence as to percentage rate increases that comparable jurisdictions were offering to law enforcement units with which the public entities negotiated. Indeed, very little persuasive data on external comparables is in the record.

Traditional Factors

While not a statutory criterion, internal comparability is a factor which neutrals consistently take into account in impasse resolution. Although there is little evidence on external comparables, there is compelling evidence on internal comparability. As previously stated, certain contractual matters lend themselves to internal comparability while other issues may be unique to a unit. The wages paid to a particular classification within an entity will vary depending upon the nature of the services rendered. An annual percentage increase in that wage rate, though, depends upon factors affecting all

employees not just unit members. The fact-finder is of the opinion that the 0%, 2% and 2% negotiated by the Teamsters is appropriate and there is no reason why this unit should be subject to the uncertainty of a wage re-opener when the only other bargaining unit in the City has a three year commitment.

The fact-finder is cognizant that the unit represented by the Teamsters is funded 90% by Utility accounts whereas the FOP is paid 100% out of the General Fund. The fact-finder further understands that the City is willing to increase utility rates enabling it to pay the rate increases negotiated by the Teamsters. Still, both the FOP and the Teamsters units are City employees, not employees of the General Fund or employees of utility funds. Both units provide essential services for the residents and businesses of the community and these services require a fair and equitable compensation, consistent with the ability of the City to pay and with other economic factors relevant in determining a wage increase.

Thus, the fact-finder recommends a wage freeze for 2012, a 2% increase effective April 1, 2013 and a 2% increase effective April 1, 2014.

Recommendations

Based on the preceding discussion, the Fact-finder makes the following recommendations:

Article 8 Hours of Work and Overtime

Section 8.1 Intent of Overtime

Current contract language

Section 8.5 Voluntary Overtime.

Current contract language

- A. Full-time Road: Voluntary overtime is first offered to the officer on that shift who is on their day off. If two (2) officers are off on the same shift, the most senior officer based on classification seniority is offered the overtime first, then the junior officer, then by classification seniority. It would then be offered to full-time certified dispatchers, then to any reserve that is certified and road cleared. Road overtime available to dispatcher shall be offered first to the full-time dispatcher scheduled off that day. Then by seniority. Mandatory road overtime for dispatchers is filled in the same manner as the road officers
- B. Mandatory Overtime: If the shift cannot be filled per (A) above, the officers with the least classification seniority is ordered in. The officer(s) on their day off would be contacted last, using reverse classification seniority.
- C. Dispatch: Overtime is offered first to the full-time dispatchers scheduled off that day, then by classification seniority. Mandatory overtime is filled in the same manner as the road officers. The parking enforcement officer, for the purposes of overtime, will be treated as dispatch and will be ordered in the same manner as any other dispatcher based upon seniority.

Article 16 Insurance

Section 16.1 Premium

- A. Effective June 1, 2012, bargaining unit members shall have the same health insurance, including surgical, dental, vision, and prescription drug coverage as that which is provided for all non-bargaining unit employees (including all managerial employees). Eligible employees will have a network deductible responsibility of \$200 for single coverage and \$400 for family as part of the medical and Rx coverage provided by the city. The city will cover approved network claims in excess of the employee deductible. The city may choose to cover claims via fully insured, self-funded, health reimbursement accounts, or any administrative combination thereof. In addition, the monthly employee premium share for all of the above listed shall be eleven percent (11%). The City shall pay eighty –nine percent (89%).
- B. Effective June 1, 2013, bargaining unit members shall have the same health insurance, including surgical, dental, vision, ad prescription drug coverage as that which is provided for all non-bargaining employees (including all managerial employees). Eligible employees will have a network deductible responsibility of \$375 for single coverage and \$750 for family as part of the medical and Rx coverage provided by the City. The City will cover approved network claims in excess of the employee deductible. The City may choose to cover claims via fully insured, self-funded, health reimbursement accounts or any administrative combinations thereof. In addition, the monthly employee premium share for all of the above listed benefits shall be twelve percent (12%). The City shall pay eighty-eight percent (88%).
- C. Effective June1, 2014, bargaining unit members shall have the same health insurance, including surgical, dental, vision, and prescription drug coverage as that which is provided for all non-bargaining unit employees, including all managerial employees. Eligible employees will have a network deductible responsibility of \$550 for single coverage and \$1,100 for family as part of the medical and Rx coverage provided by the City. The City will cover approved network claims in excess of the employee deductible. The City may choose to cover claims via fully insured, self-funded, health reimbursement accounts, or any administrative combination thereof. In addition, the monthly employee premium share for all of the above listed benefits shall be thirteen percent (13%). The City shall pay eighty-seven percent (87%).
- D. Within thirty (30) calendar days of the ratification of the Agreement, a health care committee (CHH) shall be formed with one (1) representative from the Union, one (1) representative from any other City bargaining unit, one (1) non-Union employee, and up to three (3) administrative personnel.

The purpose of the HCC is to evaluate the current health care plan and to recommend changes in order to keep healthcare premium costs for both the employee and the Employer within reasonable limits for 2013 and 2014. Said health committee shall make timely recommendations to the City Council and Mayor prior to the next benefit year and in time for consideration of said recommendation.

Section 16.2 Coverage

- A. Employees and members of their families shall have the right to go to providers outside of the plan, but if they do so, the City and the employees will pay as provided in the plan.
- B. For purposes of maximizing negotiating leverage for health care coverage, bargaining unit employees will be provided the same plan(s) as provided for all non-bargaining unit employee, but in accordance with the caps and/or reimbursements rates referenced above.

Current contract language for remaining Article 16 provisions.

Article 22 Wages

0% increase in 2012, a 2% increase in 2013 and a 2% increase in 2014 is recommended.

Current contract language for remaining Article 22 provisions.

To the extent the parties have negotiated and agreed upon changes to the agreement, those changes are incorporated herein as set forth in Appendix A. If contract language has not been modified by the parties or a change recommended herein, then current contract language shall prevail. Should consistency with these recommendations require additional language modifications within the Agreement, these are also recommended.

Respectfully submitted,

/s/ Margaret Nancy Johnson

Service

A copy of the foregoing Report and Recommendations has been electronically served this 21st day of June, 2012, upon the State Employment Relations Board at med@serb.state.oh.us; the City at jkrock@clemansnelson.com; and upon the Union at bbbgh@live.com and tcrawford@fopohio.org.