

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF FACT FINDING
BETWEEN THE
CITY OF BEXLEY
AND
FRATERNAL ORDER OF POLICE, CAPITAL CITY LODGE #9

SERB Case #'s 12-MED-08-0758 & 0759

E. William Lewis, Fact Finder

Date of Hearing: April 29, 2013

Fact Finding and Recommendations

Appearances:

For the City:

Marc A. Fishel, Esq.
Fishel Hass Kim Albrecht
400 South Fifth Street, Suite 200
Columbus, Ohio 43215

For the FOP:

Russell E. Carnahan, Esq.
Hunter, Carnahan, Shoub,
Byard & Harshman
3360 Tremont Road, 2nd floor
Columbus, Ohio 43221

AUTHORITY

In the matter brought before Fact Finder E. William Lewis in keeping with applicable provisions of Ohio Revised Code 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of Ohio Revised Code 4117, particular those that apply to Safety Forces and mutual directives of the parties.

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STATE OF OHIO
EMPLOYMENT RELATIONS BOARD

In attendance:

For the City:

Marc A. Fishel	Attorney for the City
Mr. Ben Kessler	Mayor
Mr. Larry Rinehart	Police Chief

For the FOP:

Russell Carnahan	Attorney for the FOP
Mr. Pete Brickey	Detective
Mr. Keith Elliott	Police Officer
Mr. Kenneth Gough	Sergeant
Mr. Bernard Hanna	Detective
Mr. Ron Kenefick	Sergeant
Mr. Peter S. McCollam	Police Officer

BACKGROUND:

The City of Bexley, hereinafter known as the Employer/City, provides municipal and law enforcement services to approximately 13,000 citizens. Fire and EMS services are provided by the City of Columbus, to Bexley on a contract basis. Bexley covers a geographical area of 2.4 miles, and is bordered on the east side by Whitehall and on the north, south and east side, by Columbus. The Fraternal Order of Police, Lodge #9, hereinafter known as the Union/FOP, represents a bargaining unit of twenty-five employees. It is composed of twenty-one Police Officers and four Sergeants. The FOP is one of three City bargaining units.

This Case is a re-opener to the CBA that expires on December 31, 2014. The parties have had four or five bargaining sessions, including one with this fact finder. All the issues were resolved except the following:

ARTICLE 15 - WAGES

Section 15.1. Wages

ARTICLE 21 - INSURANCE

Section 21.3 Premium Payment

Based on the mutually agreed upon settlement procedure between the parties, this fact finder was appointed by SERB on March 19, 2013. At the conclusion of the mediation session with the fact finder on March 19, 2013, the parties mutually agreed to hold the Fact Finding Hearing on April 29, 2013, if needed.

In accordance with Ohio Revised Code 4117.14(C)(4)(e), in making recommendations, the Fact Finder will take into consideration the following factors:

- (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.

The format when addressing the unresolved issues, will be to list the issue or Article, followed by the positions of the parties, the fact finder discussion and his recommendation. The issues will be addressed in the same order as in the Hearing.

THE FACT FINDING EVIDENTIARY HEARING:

The Hearing was officially opened at 10:30am, on April 29, 2013. The following Exhibits and Pre-submittals were introduced by the parties:

- Joint Exhibit #1 Current Collective Bargaining Agreement
- Joint Exhibit #2 City Pre-submittal
- Joint Exhibit #3 FOP Pre-submittal

The Union introduced Exhibits #1 thru #9 at the Hearing, hereinafter identified as UE-1 etc.

The City introduced one general Exhibit at the Hearing, composed of seventeen Tabs. City Exhibits will be identified as CE,Tb-1 etc.

ARTICLE 15 - WAGES

Section 15.1 Wages

UNION POSITION:

Section 15.1 Wages. The following wage rates for members shall be paid as set forth below:

- A. Effective January 1, 2012: Current language
- B. Effective January 1, 2013: (3%) three percent
- C. Effective January 1, 2014: (3%) three percent

CITY POSITION:

Section 15.1 Wages. The following wage rates for members shall be paid as set forth below:

- A. Effective January 1, 2012: Current language
- Effective 7/1/13--(1.5%) one and one-half percent
- Effective 7/1/14--(2%) two percent

DISCUSSION:

This municipality, as well as all other municipalities, has been impacted by the "Great Recession" of 2008. Evidence and testimony showed that the

City of Bexley has and is experiencing a decrease in revenue(JE-2&3). In the first year of this Agreement, the parties agreed to a wage freeze and other concessions, which included changed health care coverage and increased premium contributions by employees(JE-1).

The City's primary sources for General Fund(GF) revenue are the income tax, estate taxes(discontinued 2012), local government funding(State of Ohio), and real estate taxes(CE-Tb-2). Bexley's Police Department is funded entirely from the General Fund. Local government funds have been reduced from a high of \$1,006,615 in 2006, to a low of \$576,499 in 2012. Real estate tax revenue has remained constant since 2003, averaging nearly \$650,000 per year. The estate tax was discontinued, per State law, after 2012. It averaged approximately \$1,738,000 per year between 2003 and 2012(CE-Tb-2).

Although the City budgeted no revenue from estate taxes for 2013, \$300,000 was received, per evidence and testimony. Because of the elimination of the estate tax and the decline in local government funding, the City successfully passed a .5% increase to the income tax in November 2011(JE-2,3&FOP-1). Collection began in 2012. In 2013, the City shows an increase in budgeted income tax revenue of \$2,356,706 over 2011 actual receipts(CE-Tb-2). Additionally, the March 2013 City Auditor's Report, shows income tax receipts for the first quarter \$172,000 above budget(CE-Tb-1,FOP-3). Hearing testimony and FOP Exhibit 1, identifies the City making reductions in personnel, personnel costs, and freezing wages, allowing for a reduction in expenditures of \$930,000.

Through austerity moves, including negotiated concessions, personnel reductions and the addition of the .5% income tax, the City appears to be "righting the ship". However, to build carryover balances as in 2010 and 2011 is unlikely, without estate tax spikes as experienced in 2009(CE-Tb-2&4).

Since this CBA was negotiated, evidence identified during these re-opener negotiations a citizen's claim for an income tax refund. A refund of \$2,000,000 is due to the citizen. Payments are to be made from the General Fund beginning in 2013 in the amount of \$1,200,000. Subsequent payments of \$200,000 per year, plus interest, will be made to the citizen in 2014

through 2017(JE-2). Obviously this is a sizable amount to be paid out of the General Fund. The \$1,200,000 hit to the General Fund would reduce the carryover balance to a projected \$624,478 for 2014(CE-tb-8).

However, on the upside, a \$300,000 final payment of the discontinued estate tax was received in 2013, not included in the budgeted amount(CE-Tb-2). Also, the reported first quarter income tax revenue increase over budget is a positive trend, which reflects a central Ohio economic trend, in the fact finder's opinion. The \$1,000,000 Rainy Day Fund will remain in tact according to City submitted evidence. A fund not enjoyed by a number of municipalities.

This bargaining unit was the "lead-dog" in the fact finder's opinion, in recognizing the City's problem with the estate tax loss and reduced local funding from the State. In 2012 they agreed to a wage freeze and a number of concessions in the City's health care plan(JE-1). The other two City bargaining units are taking a zero wage increase for this year, as was taken by this unit in 2012. They are receiving annual increases of 1.5% effective 1/1/14, and 2% effective 1/1/15(CE-Tb-15,16).

The City's wage proposals spread over the years 2012 and 2013, would provide these bargaining unit members an average reported increase of .75% per year. Spread over a three year period, the City's proposal would average 1.166% per year. However, the actual paid amounts would average less than a annual increase of 1.166%, since the effective date of the increases are postponed to mid-year in years two and three. A one-percent annual increase costs the City \$24,500, per the parties stipulation. Therefore, excluding "roll-up" and compounding per employee, the City's proposal of 1.5%, effective 7/1/13 and 2%, effective 7/1/14, would cost over three years \$79,625. Versus a cost of \$122,500 on an annualized basis for years 2013 and 2014.

Comparable data submitted by the FOP shows area Lodge #9 municipal police units, averaging a 2.8% increase per year, for years 2012 through 2014(FOP-8). This represents nearly all the contiguous suburbs to Columbus. Additionally, unique to Safety Force's bargaining units, these employees' portion of the pension pick-up will increase by .75% per year, for years 2013 through 2015(FOP-9).

According to Advocate testimony, this bargaining unit has always been in the top five of area Police Officer pay(FOP-8). Bexley Police Officer's pay will fall out of the top five even if the FOP position were recommended. The City representatives readily acknowledged that this is a high quality Police Department, and has a particularly difficult policing mission considering the immediate surrounding areas' crime rate(FOP-7). Also, both parties expressed concern about future recruiting.

In the fact finder's opinion, the City has taken effective long term steps to address the loss of estate tax revenue and reduced local government funding. They are currently experiencing a short-term cash flow problem, caused by the income tax refund requirement. However, per the City Auditor's recent Report, they have problems, but revenues are trending above budget expectations(FOP-3). In recognition of the cash flow issue, the fact finder makes the following wage recommendation:

RECOMMENDATION:

Effective July 1, 2013, an across the board wage increase of 2% (two-percent) for all bargaining unit members. Wage schedules are to be adjusted accordingly.

Effective January 1, 2014, an across the board wage increase of 1% (one-percent) for all bargaining unit members. Wage Schedules are to be adjusted accordingly.

Effective July 1, 2014, an across the board wage increase of 1% (one-percent) for all bargaining unit members. Wage schedules are to be adjusted accordingly.

Effective December 1, 2014, an across the board wage increase of 1% (one-percent) for all bargaining unit members. Wage schedules are to be adjusted accordingly.

ARTICLE 21--INSURANCE

Section 21.3. Premium Payment

UNION POSITION:

Section 21.3. Premium Payment. Effective May 1, 2013, the following percentages of premiums shall be paid by the City and each member for single or family coverage under the health, **vision**, and **dental** insurance plans.

PREMIUM SHARE	SINGLE	FAMILY
City	80%	80%
Member	20%	20%

For the duration of this Agreement, the amount of premiums paid by members for health, vision, and dental insurance coverage shall not exceed the cost of 20% of the premiums that were in effect for such coverages on April 1, 2013.

CITY POSITION:

ARTICLE 21---INSURANCE

Current language.

DISCUSSION:

One year ago plus, the parties through negotiations, agreed to the current configuration of health, vision, and dental insurance. This was done to provide the City some relief due to the decreased revenue from estate and local funding taxes. At the time of the changes the parties were aware of the approved income tax increase of ½ of one percent. All other City employees' insurance have since been amended similarly, through negotiations or ordinance(CE-Tb-15,16). Thus, providing the City with economy of scale, albeit, for only seventy eight employees. Furthermore, in

2013, the City on its own volition, changed providers, increased their subsidy, and thus, reducing all employees financial liability(JE-2). According to undisputed City advocate testimony, employees on average are paying an effective premium rate of 14% rather than 20% as a result of the changes the City made. With the City's increased current financial liability due to the income tax refund requirement, and the recent bargaining histories, the fact finder cannot recommend increasing the City's insurance liability above what it is already assuming.

RECOMMENDATION:

ARTICLE 21----INSURANCE: Current language.

CONCLUSION

The Fact Finding recommendations contained herein were arrived at giving consideration to the positions and arguments of the parties, and the criteria enumerated in ORC 4117.14(C)(4)(e). Additionally, the Fact Finder incorporates as part of his recommendations, any tentative agreements reached between the parties during their re-opener negotiations.

This concludes the Fact Finding Report.

Respectfully submitted this 24th day of May 2013.



E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finder's Report was mailed by regular U.S. mail to Mr. Russell E. Carnahan, Esq., FOP, Lodge #9 Representative, at 3360 Tremont Road, 2nd floor, Columbus, Ohio 43221, and to Mr. Marc A. Fishel, Esq., City Representative, at 400 South Fifth Street, Suite 200, Columbus, Ohio 43215, and by regular U.S. mail to Ms. Mary Laurent, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215, this 24th day of May 2013.

A handwritten signature in cursive script that reads "E. William Lewis". The signature is written in black ink and is positioned above the printed name and title.

E. William Lewis
Fact Finder