

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the matter of Fact Finding between:

**Ohio Patrolmen's Benevolent
Association**

Employee Organization

and

City of Barberton, Ohio

Employer

SERB CASE No. 12-MED-10-1141
12-MED-10-1142
12-MED-10-1143

**FINDINGS
AND
RECOMMEDATION**

Stephen Kubic
Fact-Finder

Date of Issuance of Report – March 19, 2013

Appearances:

For the Ohio Patrolman's Benevolent:
Association (OPBA)

S. Randall Weltman, OPBA Attorney
Monte Harris, OPBA Gold Unit
Chris Mitchem, OPBA Blue Unit
Bob Lynn, OPBA Gold Unit
Rob Mingle, OPBA Blue Unit

For the City of Barberton

Yamini Adkins, Deputy Director Labor
Relations Summit County/Consultant
Bill Judge, Mayor, City of Barberton
Ray Flickinger, Finance Director, City of
Barberton

1. INTRODUCTION

The State Employment Relations Board appointed Stephen Kubic to serve as Fact Finder in the above referenced case in compliance with the Ohio Revised Code 4117.14 (C). The Fact Finder was notified of the appointment by e-mail dated November 28, 2012. However, on or about the same date, the parties agreed to an Extension Agreement to provide time for additional bargaining. Additional bargaining sessions were held in January and February of 2013. These negotiations did not result in an agreement. Therefore, a fact-finding hearing was held on March 5, 2013. The parties are to be commended for the manner in which they addressed each other, as well as the fact-finder in that hearing.

2. BACKGROUND

In compliance with the Ohio Revised Code Section 4117.14 and the Ohio Administrative Code Rule 4117.905 (j) and 4117.905 (k) the Fact-finder considered the following criteria in making the findings and recommendations contained in this report:

1. Past Collective Bargaining Agreements between the parties;
2. Compensations 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 the 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, 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 the issues submitted to mutually agreed upon

dispute settlement procedures in the public service or in private employment.

Barberton is a city in the State of Ohio which is located in Summit County, Ohio, approximately 6 miles south-west of the city of Akron, Ohio. Population as of the 2010 census was 26,550. Barberton, and its employees, like so many other cities in Ohio and throughout the nation, has been the victim of the greatest recession since the great depression. It has experienced a significant decrease in revenue, not only in its own tax collection, but in its share of State tax dollars as well. Consequently, it has been forced to seek concessions from each of its bargaining units, as well as, impose reductions upon those employees, including elected officials, who are not members of bargaining units.

The parties¹ are currently signatories to Collective Bargaining Agreements (CBA) with effective dates of May 23, 2011 through December 31, 2013. These parties have traditionally maintained three separate CBAs for each of its law enforcement Bargaining Units. However, these CBA's are bargained concurrently with representatives of each of the three units and their mutual representative.

The Bargaining Units involved in this matter are:

- 1) All full-time Police Officers (Blue Unit) of which there are approximately 28 Officers (Case No. 12-MED-10-1141);
- 2) All Police Sergeants and Lieutenants (Gold Unit) of which there are approximately 10 Sergeants and Lieutenants (Case No. 12-MED-10-1142);
- 3) All Dispatchers/Jailers of which there are approximately 9 Dispatchers/Jailers (Case No. 12-MED-1143);

The Parties timely filed the required pre-hearing statements pursuant to section 4117-9-05 of the rules of the State Employment Relations Board (“hereinafter SERB”). In these pre-hearing statements, the parties, each identified

¹ The City of Barberton, Ohio and the Ohio Patrolmen's Benevolent Association (OPBA)

the only issue involved in these negotiations. That single unresolved issue appears in their CBA "Reopener" clause² which reads:

Wage rates shall remain unchanged through December 31, 2012. Either party may reopen negotiations for the sole purpose of negotiating wages (hourly rates) for 2013 by providing written notice to the other party between September 1, and October 31, 2012. If the parties are unable to reach agreement on wage rates, either party may exercise its option to proceed to any dispute resolution procedures available under 4117 ORC, as may be applicable.

The hearing on this matter began a 9:00 am on March 5, 2013. Prior to opening the hearing, and on other occasions during the hearing, the Fact-finder, offered to mediate. On each such occasion the parties indicated that they were not interested in mediation and only wished to present evidence and receive the Fact-finder's findings and recommendation.

3. DISCUSSION AND RECOMMENDATIONS

In addition to the bargaining units mentioned above, the City of Barberton³ maintains CBAs with two other bargaining units. These were referred to as; the AFSCME⁴ unit and the Firefighters⁵. These units, although not directly involved in these negotiations have an effect on them. Underlying these negotiations was a feeling among the OPBT bargaining units that they might have been slighted in the last negotiations. In fact, there was considerable discussion by both parties which related to which bargaining unit(s) had provided the greatest aid to the City during the 2010 negotiations.

These facts were blurred by the bargaining history itself. Historically, the City had conducted negotiations with either the police or firefighters initially

2 Section 16.2 of the Dispatcher and Jailers CBA, and Section Section 17.2 of the remaining CBAs

3 Hereinafter "the City" or "Barberton"

4 American Federation of State County and Municipal Employees

5 Represented by the International Association of Fire Fighters (IAFF)

during any given cycle, and attempted to use those negotiations as a pattern for the remaining units. The three units involved in the instant negotiations had been the “lead negotiations” for the 2011- 2013 contract cycle. The representatives of these units indicated that statements had been made during those negotiations to the effect of the City's desire of “treating everyone similarly”. Unfortunately for the members of these bargaining units, those desires are not contained in the current CBA, and the individuals alleged to have made statements pertaining to parity are no longer City officials.

Ultimately, the City did conclude bargaining with these units. Those CBA's did contain a number of concessions⁶. The manner in which these concessions were made provides insight into the relationship between these parties. All concessions made by the bargaining units are accompanied by “sunset” language indicating both parties desire to have as little negative long-term impact on the bargaining unit as possible. Needless to say that there were a number of concessions made by the police units including a freeze in wages for the first two years of the agreement and a wage re-opener in the third year of the agreement. Notably, there was also a reduction in the amount of the police officers uniform allowance in the first year of the agreement.

After the City had concluded negotiations with the police bargaining units, it engaged in negotiations with the IAFF bargaining unit. That unit was agreeable to some concessions, but ultimately chose to submit the negotiations to fact-finding (case no.:10-MED-09-1074). The fact-finder in that case endorsed many of same concessions which were in the police agreements, however, the agreement did not contain a one year reduction in uniform allowance⁷ and did provide for a one percent increase in pay in both the second and third years of the agreement⁸.

6 There is no question that due to the additional cost (such as medical premiums) absorbed by these police officers and the lack of a pay increase many have suffered a net loss in pay.

7 \$400

8 The City and its Firefighters later agreed to delay the one percent (1%) increase in 2012 and instead increase firefighter wages by two percent (2%) effective January 1, 2013.

As a result of the “wage re-opener” stated above, the police units are seeking to have the City provide a wage increase. The police officers believe that an increase of five percent (5%) is in order as they have not had a wage increase since 2009⁹. The City, however, contends that even though its financial condition has improved, it has not improved to the point where it can afford an increase of this magnitude. It contends that the financial condition of the City remains “at risk”. It believes that it can not afford anything more than a one percent (1%) increase.

In support of its position the City introduced a number of documents intended to illustrate many of the austerity measures it has taken. These include, but are not limited to, salary decreases for non-bargaining unit employees and elected officials. In addition, it introduced a copy of its current budget and a copy of Ordinance No 97-2011. Briefly, this Ordinance sets up a minimum fund balance, which indicates that the City must maintain an amount equal to ten percent (10%) of its annual budget as a minimum carryover each year.

The OPBA submitted a document which compared wages and wage increases of these officers relative to police officers in the Summit County, Ohio area and the State of Ohio, as well as, several documents which provide insight to the parties bargaining history¹⁰ and documentation which indicated projected additional savings the City may realize.

A review of the guidelines at the beginning of this document, leads one to conclude that the duty of the fact-finder here is to determine, as best he can, what would be a fair wage increase, if any, in light of the current economy and the financial condition of the City.

9 These police officers had negotiated a three percent (3%) wage increase which would have been effective on January 1, 2010 in the CBA which had effective dates of January 1, 2001 – December 31, 2010, but they agreed to waive that increase due to the City's financial condition in 2010.

10 It should be noted here that both parties submitted several additional exhibits, which helped provide the fact-finder a picture of what had transpired in previous and current negotiations, as well as testimony to illustrate them. They were greatly appreciated and of great assistance.

A review of SERB's annual wage settlement report, finds that Police Officers across the State of Ohio have averaged a 1.83% annual increase over the period 2010 through 2012 or a total of 3.55% over the period. However, Police Officers have not fared as well in Summit County. While some units in the County did see as much as a 3% annual increase in the current year, most did not receive a 3% increase over the entire period. Yet, the fact-finder did not find another Police bargaining unit, which received no increase over the entire period, as is the case with the Barberton units.

In addition, internally, the Fire Fighter unit received a 2% increase effective January 1, 2013. One would conclude that some wage adjustment would be valid. In fact, the City has recognized this in its offer of a 1% increase.

As noted above, City Ordinance requires the City to maintain a 10% carryover each year. A review of Employer Ex D¹¹ indicates that the projected carryover for this year exceeds that amount. In addition, the City's Finance Director indicated that he tended to make his revenue estimates contained in this document conservatively. One would, therefore, conclude that an increase in excess of the 1% proposed by the City would be valid.

Therefore, it is hereby recommended that the wages of the members of these units are to be increased by two percent (2%), effective January 1, 2013. In addition, these employees shall be granted a one time payment of four-hundred dollars (\$400) payable in the first pay received by these employees after both parties ratify this recommendation.

¹¹ General Fund Summary for Budget Year 2013

4. TRANSMITTAL

This report regarding the finding of facts and recommendations on the unresolved issues is hereby transmitted by e-mail to the Employer, the Union, and the State Employment Relations Board.

Issued at Belmont County, Ohio on March 19, 2013.


Stephen Kubic, Fact Finder