

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May 15, 2013

In the Matter of:)	
)	
The Ohio Patrolmen's Benevolent Association)	
)	
)	SERB Case No's
)	12-MED-10-1243
vs.)	12-MED-10-1244
)	12-MED-10-1245
The City of Columbiana)	
)	
)	

APPEARANCES

For the Union:

Jeff Perry, Bargaining Representative OPBA
Chris Dailey, Patrolman and Bargaining Unit Representative
Mark Edwards, Patrolman and Bargaining Unit Representative
Jim Ewing, Sergeant and Bargaining Unit Representative
David Patton, Patrolman and Bargaining Unit Representative
Debbie Zembower, Dispatcher and Bargaining Unit Representative

For the City of Columbiana:

Mike Esposito: Clemans, Nelson and Associates; Attorney for the City of Columbiana
Kevin Shebesle, Clemans, Nelson and Associates
Tom Gladis, Chief of Police for the City of Columbiana
Mike Harold, Finance Director for the City of Columbiana

Fact Finder: Dennis M. Byrne

Background

The fact-finding involves three different bargaining units of the Columbiana Police Department and the City of Columbia (Employer). The bargaining units are the Sergeant's unit with two (2) members, the Patrol Unit with eight (8) members, and the Dispatch Unit with four (4) members. The Ohio Patrolmen's Benevolent Association (Union/OPBA) represents the unionized employees. Prior to the Fact Finding Hearing, the parties engaged in two (2) negotiating sessions. Because the parties' current contract expires on December 31, 2013, these negotiations involved a wage reopener provision contained in the current agreement. Consequently, there are only two (2) issues on the table: (1) wages and (2) the two-tier wage scale language of the existing agreement.

The parties were unable to reach an agreement on the issues and scheduled a Fact Finding Hearing. The Hearing commenced at 10:00 A.M. on April 12, 2013 at the Columbiana Police Department. The hearing ended at approximately 12:00 P. M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 private employment.

Introduction:

This dispute is factual in nature. The Police Department personnel believe that they are underpaid compared to other comparable police personnel doing the same or similar work. The Employer disagrees with that assessment and believes that the officers are well paid compared to others doing the same or similar work. Each side bases its arguments on the “evidence” provided by information from comparable jurisdictions. In addition, the police personnel believe that the financial condition of the City has improved to the point that it can afford to pay a raise in the last year of a three-year contract. The OPBA pointed out that this negotiation was a wage reopener and that the base wage of the entire Police Department has been frozen for two years.

The obvious question is whether the officers are paid the same (more or less) than other personnel doing the same or similar work. The way that this question is usually answered in Ohio is by comparison to other jurisdictions; the so called “comparables data.” Therefore, some discussion of comparability is necessary before the Fact Finder’s analysis and recommendation is given.

The question is what is comparability. There are any number of factors that could impact comparability, but three are almost universally agreed upon. To be comparable different jurisdictions should be roughly the same size, have similar income, expenditures, etc., and be located in a defined labor market. In addition there are other factors that can affect the decision on whether two jurisdictions are comparable depending on the unique circumstances of the particular case.

Police personnel perform a highly skilled and dangerous job. However, it is also true that some jurisdictions have more murders, robberies, rapes, etc., than other

jurisdictions. The main correlate is population density. That is, larger jurisdictions have more crime than smaller jurisdictions. The rates may be similar on a per-capita basis, but in absolute terms the incidence is greater. Therefore, comparable jurisdictions usually have roughly similar populations.

The second factor is what is called a “labor market.” This is shorthand for geography. Usually there is also a different mix of jobs in different labor markets; rural labor markets are different from urban labor markets, but the short hand way to define a labor market is by similar individuals doing similar work in a given geographic area. Therefore, the second criterion for a comparable jurisdiction is the size of the labor market. This is often defined as work within a single county or in contiguous counties because individuals usually try to live close to their work place for economic and quality of life considerations.

The next criterion usually is defined by set of variables called socioeconomic status. This means that factors such as income levels, educational levels, age distribution of the population, etc., all have an impact in determining whether one jurisdiction is comparable to another.

Finally, there are other factors that may impact either a jurisdiction’s revenue and spending patterns. In this regard, the form of government was also mentioned as a factor determining comparability. The City contends that townships, with different sources of funding and a different administrative structure, are not comparable to Columbiana.

The best way to select comparable jurisdictions is to identify the criteria that define a comparable; then select jurisdictions that fit the criteria. This means that the

parties themselves can select the jurisdictions that they believe are comparable. If the parties do agree on comparable jurisdictions, then they can negotiate rather than debate. Unfortunately, the parties often do not agree on what defines a comparable jurisdiction; and consequently, that decision is left up to a neutral. Neutrals make their decisions about comparability based on their understanding of the data presented by the parties and their experience and education.

In this particular case, the parties have radically different ideas about what constitutes a comparable jurisdiction. This means that the Neutral is forced to determine which jurisdictions are comparable to Columbiana, and he will ultimately base his recommendations on his understanding of what constitutes a comparable jurisdiction.

The decision rule for this Neutral is that if a jurisdiction is significantly different than Columbiana on any of the four criteria, the presumption is that it is not comparable to Columbiana. However even in that situation, each jurisdiction that is identified as being non-comparable will be examined in detail to determine if it is in any way comparable to Columbiana according to ORC 4117.

There is another problem with the use of comparables data. The problem is how to summarize the data in a way that allows reasonable analysis that leads to valid and understandable bargaining positions. In this Neutral's experience, this has come to mean that the average value of a variable has a special significance. That is, if the police personnel in any jurisdiction are paid less, a lower average wage, than personnel in other jurisdictions, then there is proof that a wage disparity exists. This is incorrect.

A simple arithmetic example may be useful. Assume that there are only two jurisdictions in the sample. In jurisdiction A the base wage is \$20,000.00 and in

jurisdiction B the base wage is \$80,000.00. The mean wage is \$50,000.00. In the second example there are also two jurisdictions. In jurisdiction A, the wage is \$49,000.00 and in jurisdiction B, the wage is \$51,000.00. The mean wage is also \$50,000.00. Therefore, both data sets have a mean wage of \$50,000.00. However, that piece of information is meaningless in the first example and extremely important in the second example. This means that the mean value by itself gives limited information. The way the parties try to get around this problem is by presenting the raw data to the Neutral and showing the mean value somewhere on the exhibit.

The problem is that the mean value of any distribution of data is only a measure of central tendency. By itself, the mean gives some information, but not much. In order to be meaningful, the data must also include a measure of variation. To use the above examples, in the first situation the mean varies substantially from the individual data points, and therefore, the mean gives very little information about the average wage of any individual. In the second example, the mean is an excellent measure of the wage because there is little variation in the data. Therefore, the use of a mean without some investigation of the dispersion of the data is meaningless.¹

Another factor must also be mentioned. Unfortunately, very similar jurisdictions can have substantially different pay scales for their employees for myriad reasons. Different development patterns, migration patterns, etc., often lead to different contract clauses. These differences are manifestations of different ways that negotiators reach agreement during the bargaining process. It is the art of negotiation that allows the parties to arrive at an agreement that works for them at a particular time and place.

¹ The preferred measure of variation is a statistic called the standard deviation.

Comparability to other jurisdictions on only one piece of information in what is often a complex decision matrix.

In the present situation, the parties do not agree on the definition of a comparable jurisdiction; and consequently they reach different conclusions about whether the employees of Columbian Police Department deserve a raise. These positions are based on their analysis of their selected comparables lists. Because, the parties' positions are based on the "evidence" from comparable jurisdictions, the Fact Finder will have to make a decision on what constitutes a similar jurisdiction. When that exercise is completed, an analysis of the parties' positions will be undertaken; and based on that analysis, a recommendation will be given.

The Union's comparables list includes Austintown Township, Beaver Township, Boardman Township, Canfield, Poland Township, Salem, East Liverpool, and Youngstown². In addition, the Union's comparables list is not consistent over all three bargaining units; and therefore, the data are also not consistent across all bargaining units. The City's comparables include Salem, East Liverpool, Campbell, Hubbard, Cortland, Canal Fulton, Uhrichsville, Toronto, Newton Falls and East Palestine.

The City strenuously objected to the inclusion of the Townships based on differences in between townships and cities in funding sources, government structure, etc. Finally, The Union also presented an exhibit base on "old comparables" used in prior negotiations to illustrate that it has changed its definition of comparability over time.³ In general, the parties' lists are radically different.

² The Fact Finder does not believe that Youngstown is comparable to Columbiana on any of the measures discussed above. Therefore, all analysis in this report based on the

³ That list includes Canfield, Salem, Beaver Township, and East Palestine.

Looking at the Union's comparables: Austintown and Boardman have significantly larger populations when compared to Columbiana, and both have higher per capita income and lower household income. Both are located in Mahoning County, which is contiguous to Columbiana County; and consequently both are located in the same labor market. In terms of SES variables, both are somewhat similar to Columbiana. However, both are Townships and have different funding sources and forms of government when compared to Columbiana. Austintown and Boardman measure up in terms of some criteria; income and labor market area, but are significantly larger than Columbian and have a different governmental structure. The Fact Finder believes that the difference in the size of Austintown and Boardman compared to Columbiana is so large that it limits the probative value of any information obtained from these two jurisdictions and that they are not comparable to Columbiana.

The other comparables on the Union's list include East Liverpool, Salem, and Poland Township, which the Fact Finder believes are comparable to Columbiana in spite of the fact that Poland Township has a different governmental structure. The final Union comparable is Canfield. Canfield has a similar population to Columbiana, but it has higher household income and per capita income levels. In addition, it has higher revenues and expenditures. This is reflected in the fact that it pays the highest wages on the Union's comparables list. Canfield also has different policing needs given its location at the nexus of a number of major state highways and two interstate highways. However, Columbiana is located near a major state highway, and it is in the same labor market as Canfield. Given all of the information, especially its proximity to Columbiana, the Fact Finder believes that Canfield is comparable to Columbiana.

Turning to the City's comparables list. Almost all of the City's comparables are comparable in terms of population, although Salem and East Liverpool are approximately twice the size of Columbiana. This difference is reflected in the fact that both Salem and East Liverpool raise significantly more revenue than Columbiana. On the other hand, both Salem and East Liverpool have lower median family income and lower per capita income. These are larger and poorer cities when compared to Columbiana. However, these jurisdictions were also included on the Union's comparables list; and since both sides listed them on their comparables lists, the Fact Finder believes that they should be considered comparable to Columbiana.

The City's other comparables are all similar in population and SES when compared to Columbiana. The only question is the definition of the labor market. Newton Falls, Cortland and Hubbard are located in Trumbull County, which is not contiguous to Columbiana County. Trumbull County is located directly North of Mahoning County, which does border on Columbiana County. Consequently, the Fact Finder does not believe that these jurisdictions are comparable to Columbiana based on their size and distance from Columbiana.

Therefore, the Fact Finder believes that Campbell, Canal Fulton, Canfield, East Liverpool, East Palestine, Poland Township, Salem, Toronto, and Ulrichsville are comparable to Columbiana. The Fact Finder will utilize these jurisdictions for the analysis of the wage rates in other comparable jurisdictions required under ORC 4117. Nine comparables is a fairly large number, and the Fact Finder recommends that the parties find some way to agree on a subset of this list for use as comparables in

subsequent negotiations, or develop another list that both agree is comparable to Columbiana.

The Fact Finder has discussed comparables at great length. This was required in this case because the parties presented their rationale for their positions on the wage reopener based on comparability. Both sides believed that the data showed that their position was correct. The problem with their presentations was that with the exception of Salem and East Liverpool, there were no other similar jurisdictions on either list. Therefore, the jurisdictions that are deemed to be comparable is a major factor in the Fact Finder's recommendation(s).

Issue: Article 19 – Wages

Union Position: The Union is demanding three items on the wage issue: 1) The Union is demanding a two and one-half (2 ½%) percent increase in the base wage. 2) The Union is also demanding a two and one-half (2½%) increase in each step of the wage scale; and finally, the Union is demanding a reduction in the number of steps needed to reach the top step of the scale.

Note: There were also a number of peripheral items raised at the hearing. Those items will be addressed during the discussion on this issue.

City Position: The City rejects the Union's demand(s) and counters with current contract language. That is a wage freeze for 2013.

Discussion: The Union's demand(s) encompass three (3) different groups: the patrolmen, the sergeants, and the dispatchers. Each will be discussed separately. Table 1 is a table showing the amounts that the comparable patrolmen, sergeants, and dispatchers

are paid based on the different comparables lists discussed above. That is, columns one and two show the wages paid by the jurisdictions on the Union's comparables list without data for Austintown, Boardman, and Youngstown. Columns three and four show the same calculation for the City's comparables omitting Cortland, Hubbard, and Newton Falls. Columns five and six show the same calculations for the Fact Finder's list of comparables.

Table 1

Wages and Wage and Benefits Paid by Comparable Jurisdictions

	<u>Union</u>		<u>City</u>		<u>Fact Finder</u>		<u>Columbiana</u>	
	<u>W</u>	<u>W+B</u>	<u>W</u>	<u>W+B</u>	<u>W</u>	<u>W+B</u>	<u>W</u>	<u>W+B</u>
<u>Patrol</u>	49,051	51,418	42,141	45,191	44,502	47,342	48,443	51,050
<u>Sergeant</u>	53,185	58,623	44,102	47,589	47,920	50,521	53,186	55,793
<u>Dispatch</u>	41,444	42,618	32,303	35,390	36,873	39,004	34,986	37,168

The numbers shown above are the average dollar amounts for the Union's comparables without Austintown, Boardman, and Youngstown. The numbers for the City are the dollar amounts for the City's comparables without Newton Falls, Cortland, and Hubbard. The numbers under the Fact Finder are the average wages for the nine jurisdictions that the Fact Finder found to be comparable to Columbiana. These are listed on page 9 of the Report. All amounts are dollar values.

The Union's position that the patrolmen are underpaid by approximately four (4.0%) percent is based on evidence from comparable jurisdictions. The Union's four (4.0%) percent figure is calculated considering Youngstown, Austintown, and Boardman as comparable jurisdictions. Omitting these three (3) jurisdictions from the Union's calculation shows that the remaining jurisdictions pay an average wage of \$49,051.00 to their police officers. This figure for patrol wages and benefits is \$51,418.00.

The data in columns three and four are the City's comparables without the jurisdictions located in Trumbull County. The figures show that comparable police patrolmen are paid \$42,141.00 in wages and \$45,191.00 in wages and benefits. Columns five and six show that patrolmen in comparable jurisdictions are paid \$44,502.00 in wage and \$47,392.00 in wages and benefits using the jurisdictions that the Fact Finder found are comparable to Columbiana. Reading across the Sergeants and Dispatch rows shows the same information for those job categories.

Therefore, the data in Table 1 shows the dollar amounts that other jurisdictions pay their police personnel. It is noteworthy that the data show that the Fact Finder's comparables fall between the Union's and the City's comparables in every cell on the table.

Table 2

Percentage Difference Between Columbiana and Comparables

	<u>W</u>	<u>W+B</u>	<u>W</u>	<u>W+B</u>	<u>W</u>	<u>W+B</u>
<u>Patrol</u>	98.7	1.06	1.15	1.13	1.09	1.08
<u>Sergeants</u>	1.00	0.95	1.21	1.17	1.10	1.10
<u>Dispatch</u>	0.95	0.87	1.08	1.05	0.95	0.95

Table 2 compares the wages paid in Columbiana with the wages and wages and benefits paid in comparable jurisdictions on a percentage basis. In each cell of the table, the wage paid in Columbiana is divided by the wage paid in a comparable jurisdiction. This means that a number greater than one shows that Columbiana pays more than a comparable jurisdiction and conversely a number less than one shows that a comparable jurisdiction pays more than Columbiana. For example, using patrol officers as the comparison. The table shows that Columbiana patrol officers are paid 1.3% less than the jurisdictions in the Union's comparable list as amended by the Fact Finder. Looking under the last column, the 1.08 means that the Columbiana patrol officers are paid 8.0% more than the officers in the Fact Finder's suggested list of comparables. Table 2 gets to the crux of the difference between the parties.

The data in Table 2 show that according to the Union's comparables the patrolmen are paid slightly lower wages than others performing similar work, but when benefits are added to the equation, Columbiana pays more. The situation is reversed for sergeants. They earn the same wages as other sergeants; but when total compensation is considered, they earn 5% less than their counterparts. The Union's comparables show that dispatchers are paid lower wages and benefits than other dispatchers.

Using the data from the City's comparables shows that Columbiana police personnel are paid more than comparable police personnel in other jurisdictions. This is true regardless of whether the comparison is wages or wages and benefits. This result is robust over all job classifications.

Columns five and six show the same information when the comparison group is the jurisdictions that the Fact Finder found to be comparable to Columbiana. These data also show that the patrolmen and sergeants are paid as well as other individuals performing the same duties in comparable jurisdictions. However, the data also show that dispatchers are paid less.

The data in Table 2 do not support a finding that patrolmen and sergeants in Columbiana are paid less than others performing the same work. However, the situation in terms of dispatchers is different. The data from all three sets of comparables show that dispatchers in Columbiana are less well paid than other comparable dispatchers. Even using the City's comparables, the dispatchers are significantly less well paid than other members of the Columbiana Police Department when compared to other dispatch units. The Fact Finder's list of comparables also shows that Columbiana dispatchers are paid

less than other dispatchers. The result of all of this analysis is that the data do not show that the Columbiana police personnel are underpaid with the possible exception of the dispatchers.

There is a further complication to the above analysis. Columbiana had an extremely generous longevity pay provision in its contract. That provision paid police personnel one (1.0%) percent for each year that they were affiliated with the Columbiana Police Department. That provision was changed in 2008, and anyone hired after January 1, 2008 is paid on a different (less generous) scale. Because most of the individuals who work for the Department were hired before January 1, 2008, the comparisons shown above tend to underestimate the wages and benefits paid to the current Columbiana police personnel. This would reduce all of the numbers in Table 2. The result is that the Columbiana police personnel who have been with the City for a number of years are better paid than the data in Tables 1 and 2 imply.

The Fact Finder believes that the longevity scale problem affects the interpretation of the data in Tables 1 and 2. The new longevity scale will have an increasingly noticeable impact on all Columbiana police personnel over the years. However at the current time, the longevity scale has a minimal impact because so few department employees have been hired in the last few years.

In this same vein, the City pointed out that the Union's contention that wages had been frozen for years was not technically correct. It is true that the officer's top rate was fixed, but there were increased longevity payments each year. The City testified that no other City employee enjoyed that benefit. The City did not argue that a one (1.0%) percent increase was generous. Rather, the City's position is that the police personnel

received a “raise” when all other City employees’ wages were frozen. This is true, and the Union offered no testimony on this issue.

The Union presented testimony on two other issues peripherally related to the wage issue. First, the Union demanded that the newly hired officers be paid the same as the personnel hired prior to 2008. The Union argued that the officers all performed the same function and that there was no reason for one group to be paid differently (less) than other department members. In addition, the Union contends that a bifurcated wage scale is bad for morale.

The City rejected the Union’s position. The City pointed out that the split wage scale was inserted into the contract during the last round of negotiations and had not been in place long enough to be fairly evaluated. Moreover, the City contends that the place to try to change existing contract provisions is during negotiations for a successor agreement. That is, the City believes that the Union should not try to make substantive changes in the contract during wage reopener negotiations. The City believes that this demand is the way that the Union is attempting to “win in arbitration (fact finding) what it lost in negotiations.” The City also pointed out that the negotiations for a new contract will begin later this calendar year. The City strongly argued that the Union should raise this demand during the negotiations for a successor agreement. Given all of the facts surrounding this demand, the Fact Finder believes that the City’s position is reasonable.

The Union also argued that the wage scale in Columbiana was detrimental to the Department’s ability to attract new officers. As a result, the Union believes that the overall quality of the Department will fall over time. In support of its position, the Union testified that the number of individuals taking the examination for becoming a police

officer was falling. The Union was unsure of the number of individuals taking the test, but stated that it was falling. When pressed on this issue, the Union stated that it believed that only about twenty (20) individuals took the last examination.

The City vociferously objected to this entire line of testimony. The City made three arguments on the issue. First, the City contends that hiring is an inherent management right; second, the City has hired two individuals over the past few years and claims that it had no trouble either attracting new applicants or maintaining the roster of police officers. Finally, the City put into evidence the last roll of individuals who took the test for new applicants that showed thirty-three (33) people were tested. The City claimed that there was no evidence to support the Union's contention that the Department could not attract or maintain a well-qualified applicant pool for positions in the Police Department.

The Fact Finder agrees with the City's position on this issue. If the Union proved that the lower wages and benefits paid to new officers substantially lessened the overall quality of the Department, then a neutral *might* (emphasis added) examine the hiring decisions of the Department because of safety concerns for both the public and the existing officers. However, hiring is an inherent management right, and absent some overwhelming evidence that there is some problem with the hiring process, a neutral has no reason to become involved with this issue. The proviso to this position is that the current procedures must meet the legal standards that apply to all personnel decisions. There was no testimony that the City was doing anything improperly. Consequently, the Fact Finder does not believe that there is any reason for him to examine this issue.

Finally, the Union pointed out a number of times that its members' wages had been frozen for a number of years. The Union believes that its members deserve a wage increase as a matter of equity. The Union presented evidence that the national and state economies were growing and that the City's financial picture was improving. The City did not argue that it could not afford to meet the Union's demand. Rather, the City's representatives argued that there was no reason for it to agree to increase the wages of the police officers. The City does not believe that the fact it has money means that it should use that money to pay for wage increases. The City reiterated its position that the officers are well paid and there is no evidence that there is a need to change the wage scale at this point in time.

The Fact Finder believes that data do not support the Union's position at this time. The data show that the City's financial position is improving. How the City elects to use its increased revenues is not a matter for a Fact Finder absent some evidence that the police officers are underpaid. Given the facts of the matter, the Fact Finder does not believe that the officers are underpaid with respect to other individuals performing the same or similar work.

Finding of Fact: The Union did not prove its contention that the members of the Columbiana Police Department were underpaid when compared to other comparable police departments regardless of the comparables list analyzed. The one exception is the dispatchers, and there is some evidence that they are underpaid. The size of the disparity is debatable and depends on the data analyzed. However, the longevity scale problem mentioned in the body of the report mitigates this problem for the current dispatch staff.

The time for the Union to raise its objections to the base rates and other wage issues is during negotiations for successor collective bargaining agreement, which will commence later this year.

Suggested Language: None

Signed this 15th day of May 2013, at Munroe Falls, Ohio.

Dennis M. Byrne, Fact Finder