

THE STATE EMPLOYMENT RELATIONS BOARD

May 14, 2014

**OHIO PATROLMEN'S
BENEVOLENT ASSOCIATION (OPBA))
UNION**

CASE NO. 13-MED-09-0985

and

**CITY OF FAIRLAWN, OHIO
EMPLOYER**

FACT FINDER: **JOSEPH W. GARDNER**

FACT FINDING REPORT

APPEARANCES

For the **UNION:**

For the **EMPLOYER:**

Mark J. Volcheck,
Union Representative

Kevin Campbell
Employer Representative

Cheri McGregor
Union Representative

Edward J. Riegler
Law Director

Kimberly Evans
Union Representative

INTRODUCTION

The parties timely provided position statements for the Fact Finding hearing that took place on April 18, 2014. Prior to the commencement of the case, the parties settled two of the four issues.

The parties reached tentative agreements including discipline, overtime pay, vacation, sick leave and Article 30, insurances and Article 37, incentive programs. In this last tentative agreement, the parties submitted language that has been identified as Fact Finding Report exhibit 1, attached hereto for Article 30 and 37. The matter involving Article 30 and Article 37 will be addressed in Issue 3 of this fact finding report.

The parties also agreed that each would issue proposals for Issue 1 and Issue 2, wages and duration respectively, on or before April 29, 2014. On or about April 22, 2014 the parties delivered proposals for the issue of Wages (Article 28) and Duration of Agreement (Article 41):

- Exhibit 2: Union's proposal of Wages (Article 28)
- Exhibit 3: City's proposal of Wages (Article 28)
- Exhibit 4: Union's proposal of Duration (Article 41)
- Exhibit 5: City's proposal of Duration (Article 41)

The parties also agreed that evidence of the Teamsters ratification for the Service Department Unit contract be submitted on or before May 7, 2014.

All of the below factors set forth in section 4117.14 (G)(7)(a)-(f) of the Revised Code were reviewed and considered:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved, that those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties; and
- (f) Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration and the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-

finding, or other impasse resolution procedures in the public service or private employment.

The Union proceeded first on the issue of wages under Article 28 of the Collective Bargaining Contract. The Union proposed wage increases for all of the steps in the Bargaining Unit as follows:

For the first step for members with less than two years of experience, the Union proposed a general wage increase of 3.5% for year 2014, a general wage increase of 3.5% for year 2015 and a general wage increase of 3.5% for year 2016.

For the second step of the scale, the Union proposed an extra \$1.00 per hour for equity adjustment plus a general wage increase of 3.5% for year 2014, an extra \$1.00 equity adjustment plus a general wage increase of 3.5% for year 2015 and a general wage increase of 3.5% for year 2016.

For the third step of the scale, and the fourth step of the scale, the Union proposed an extra \$1.50 per hour equity adjustment plus a wage increase of 3.5% for the year 2014, an extra \$1.50 per hour equity adjustment plus a wage increase of 3.5% for the year 2015, and a wage increase of 3.5% for the year 2016.

The Union states that this Bargaining Unit is behind other internal comparable units such as the Patrol Officers, Firefighters and Laborers. Moreover, the Union states that the disparity that exists between laborers and dispatchers in this Bargaining Unit is without reason or justification. As an example, the top pay for a custodian working for the City of Fairlawn is \$56,464.65 versus the Dispatchers top pay of \$47,069.49. The Union states that the dispatchers should be paid more than the custodians.

The Union representative states that the difference in wages between Dispatchers and Laborers is a situation that must be "corrected." The argument proposed by the Union is that the Dispatcher is a position that demands more expertise and talent than that of a Laborer and hence deserves a higher pay. The Union advances the argument that the City has the ability to finance and administer the wage increases proposed by the Union and that such a wage increase should

have no detrimental effective on the normal standards of public service. The Union argues that the City has the ability to pay for this increase.

The City states that it has reached Collective Bargaining Agreements with the Firefighters, the Teamsters, the F.O.P., and the Part time Firefighters. In all of those Collective Bargaining Agreements, the agreement with those Unions are similar if not the same as what is proposed by the City. The City stresses “pattern bargaining” and proposes consistent percentage increase in contracts throughout the city.

The City argues that the service department is not an internal comparable with the dispatchers and that pattern bargaining is necessary to stabilize the city’s collective bargaining agreements with respective Unions.

The City warns that the percentage increase in wage rates is extreme in the higher steps. If the demand of the bargaining unit is granted, there will be wage increases exceeding 10%. The City argues that these increases demanded are extreme and not within the range of the internal and external comparables.

The second issue is the scope of the reopener. Both parties agreed that there should be a reopener in 2016. The Union desires that the reopener only applies to insurance. The City, on the other hand, proposes a reopener for both insurances and wages.

Issue No.1

Article 28, Wages

Discussion

The Union’s position that there should be an increase has merit. The City concedes that point by offering an increase. The City offers a 2% increase in 2014 and a 2% increase in 2015. The City argues that the unit that represents the laborers in the street department is not a

comparable bargaining unit with the unit representing the dispatchers. The laborers can strike but the unit representing the dispatcher cannot strike. The dispatchers are a “non-striking” unit. The City further states that the “norm” is that service department units, like the street department and custodians, are paid more than dispatchers.

Both of the parties submitted comparables with other dispatchers in Summit County. Exhibit 6 is from the Employer. Exhibit 6 shows payment for entry level and highest paid dispatchers for those jurisdictions in close proximity to Fairlawn, Ohio. Exhibit 6 also shows payment for entry level and highest paid levels from other jurisdictions in Summit County, Ohio. For the entry level position of dispatchers, this bargaining unit is one of the highest paid. However, for experienced dispatchers, payment for the dispatchers in this unit is among the lowest paid.

The Union, in Exhibit 7, has submitted the pay of top earners in five jurisdictions in Summit County. The Exhibit 7 does not include Hudson, Ohio, but states Hudson’s “2013 top pay” would be above Fairlawn, Ohio in pay. In other words, at the highest level, this bargaining unit ranks seventh out of the seven comparables.

The question is the make-up of this bargaining unit. Are the unit members entry level employees or veterans? Seniority and experience usually results in better and more productive employees.

The City desires “pattern bargaining” with all of its unions stating that consistency, city wide, is a goal. The evidence shows that many of the other internal bargaining units (firefighters, part time firefighters, FOP, Teamsters and non-bargaining units) all agreed on a 2% increase for wages for the years 2014 and 2015.

“Pattern Bargaining” has benefits. It keeps different internal units to the same increases (or sometimes decreases). If, however, there are circumstances that make one unit different from others, then “pattern bargaining” has some shortcomings. The collective bargaining laws recognize that all bargaining units are not the same. The legislature permits separate bargaining units for different departments and for different levels within the departments. The collective bargaining laws recognize different units have similar but different requirements.

Reviewing all of the evidence, including the “comps,” these bargaining unit members deserve an increase in wages.

Compensation does not come only in wages. Insurance has become increasingly important to those in public employment. Keeping an eye on wages and insurance, together will allow for a fair compensation when using tax dollars.

Recommendation

This fact finder recommends that the following will become part of the collective bargaining agreement under Article 28:

For the first, second, third and fourth steps of the scale, there is a general increase of 3.5% for the year commencing January 1, 2014 and a general wage increase of 3.5% for the year commencing January 1, 2015. For the first, second, third and fourth steps of the scale, for the year commencing January 1, 2016, there be no change in the wage rate subject to a wage reopener as set forth in Article 41 this collective bargaining agreement.

Issue No.2

Article 41, Duration of Agreement

Discussion

The City requests a reopener of the contract for both wages and insurance. The City further requests that the Union and the City may file for a reopener on either or both wages and insurance. The Union, on the other hand, requests a reopener only for insurance and not for wages.

The increase in wages set forth above is a healthy attempt to bring the wages of the bargaining unit members in line with other internal and external comparable bargaining units. Over the last decade, insurances, and more specifically, the cost of insurance, is an increasingly relevant subject in collective bargaining circles. With the advent of “Obamacare,” the health insurance market is becoming volatile.

With any drastic changes in the insurance costs, either party should be able to reopen insurance and wages. Both parties should have the ability to reopen and negotiate both of these subjects in the last year of this contract. By the middle of 2015, the parties will know the ranking of wages when compared to other comparables. Both parties will also know the specific costs and coverages of insurance. Either party will be able to negotiate and petition to eliminate disparities.

Recommendation

The undersigned recommends that the following language become part of the collective bargaining agreement:

Section 41.1 Duration of Agreement. This Agreement shall be effective as of January 1, 2014 and shall remain in full force and effect through midnight, December 31, 2016. Irrespective of any other provision of this Article, the parties shall reopen negotiations solely on the subjects of Wages, Article 28, and Insurances, Article 30, to be effective for year 2016. This Agreement

shall not be reopened for any other matter. A notice to negotiate for such reopener shall be filed by either party with the State Employment Relations Board no earlier than August 1st and no later than October 31st of 2015. These negotiations shall be conducted in accordance with Chapter 4117 of the Ohio Revised Code except that Section 4117.14(G)(11) of the Ohio Revised Code shall not apply and is expressly waived.

Section 41.2 Notice of Negotiate. If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days prior to nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by regular mail and/or email. The parties shall commence negotiations within two (2) calendar weeks upon receiving such notice.

Section 41.3 Waiver. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the entire understandings and agreement arrived at by the parties after the exercise of the right and opportunity are set forth in this Agreement. The provisions of this Agreement constitute the entire agreement between the parties.

Section 41.4 Signatures. Signed and dated at Fairlawn, Ohio on this __ day of _____, 2014.

Issue No.3

Article 30, Insurances §30.10 Reopener; Article 37, Incentive Programs § 37.5

Discussion

After receiving the information set forth in Exhibit 1 and comparing the language in Exhibit 1 to the factors of ORC 4117.14(G)(7)(a)-(f), the language in Exhibit 1 is appropriate for both parties.

Recommendation

It is recommended that the language set forth in Exhibit 1 be included in the Collective Bargaining Contract.

Respectfully submitted,



JOSEPH W. GARDNER #0033400

Fact-Finder

4280 Boardman-Canfield Road

Canfield, Ohio 44406

Phone: (330) 533-1118

Fax: (330) 533-1025

CERTIFICATION

I hereby certify that on Wednesday, May 14, 2014, a copy of the foregoing Fact Finder's Report was sent via e-mail or regular mail to the following:

Representative for the Union:

MARK VOLCHECK

The Ohio Patrolmen's Benevolent Assn.
92 Northwoods Blvd. Suite B-2
Columbus, OH 43235
MarkVolcheck@sbcglobal.net

Representative for the Employer:

KEVIN CAMPBELL

4065 Fairway Drive
Medina, OH 44256
kevin@kevincampbell.org

Bureau of Mediation:

EDWARD E. TURNER

Administrator, Bureau of Mediation
65 East State St., 12th Floor
Columbus, Ohio 43215-4213



JOSEPH W. GARDNER #0033400
Fact-Finder

EXHIBIT LIST

- Exhibit 1: Article 30 and 37 Tentative Agreement
- Exhibit 2: Union's proposal of Wages (Article 28)
- Exhibit 3: City's proposal of Wages (Article 28)
- Exhibit 4: Union's proposal of Duration (Article 41)
- Exhibit 5: City's proposal of Duration (Article 41)
- Exhibit 6: City's Comparables
- Exhibit 7: Union's Comparables

TENTATIVE AGREEMENT

This tentative agreement is reached between the OPBA and City of Fairlawn for Full-Time Dispatcher negotiations.

1. Article 30, Insurances. This Article shall be current contract language with the exception that new Section 30.10 shall be added as follows:

Section 30.10. Reopener. This Article is subject to reopener for year 2016.

2. Article 37, Incentive Programs. This Article shall be current contract language with the exception that new Section 37.5 shall be added as follows:

Section 37.5. Members who are required to train other ~~bargaining unit~~ ^{full-time communication trans} employees shall be paid one additional hour at the member's overtime rate for each shift of training. The employee shall be entitled to either be paid for such time or elect to be granted one and one-half hours of compensatory time.

MV KC
Specialists

FOR THE OPBA:

FOR THE CITY OF FAIRLAWN:

Muel Woldek

Kris Campbell

Date: April 18, 2014

Date: April 18, 2014



1. **ARTICLE 28, WAGES**

Section 28.1. Wages. Effective January 1, 2014 ~~2014~~, all employees shall be paid an annual salary as follows:

~~*This reflects an increase of 0%.~~

Less than 2 years experience	\$42,690.48
More than 2 and less than 4 years experience	\$46,758.40
More than 4 and less than 8 years experience	\$49,857.60
More than 8 years experience	\$51,945.92

Section 28.2. Wages. Effective January 1, 2014 ~~2015~~, all employees shall be paid an annual salary as follows:

Less than 2 years experience	\$44,184.65
More than 2 and less than 4 years experience	\$50,546.08
More than 4 and less than 8 years experience	\$54,830.88
More than 8 years experience	\$56,992.00

Section 28.3. Wages. Effective January 1, 2014 ~~2016~~, all employees shall be paid an annual salary as follows:

Less than 2 years experience	\$45,731.11
More than 2 and less than 4 years experience	\$52,315.19
More than 4 and less than 8 years experience	\$56,749.96
More than 8 years experience	\$58,986.72

Section 28.2. Reopener. ~~The wages for years 2012 and 2013 shall be subject to negotiations pursuant to the wage reopener in Article 41.~~



Issue 1 - The City's proposed CBA language on Article 28, Wages:

ARTICLE 28
WAGES

Section 28.1. Wages. Beginning on January 1, 2014 and effective through December 31, 2016, the salary schedule for bargaining unit members shall be increased 2.0% effective January 1, 2014 and 2015, with a reopener for wage increases effective January 1, 2016, as follows:

<u>Years of Service</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Less than two years of experience	\$42,071.78	\$43,913.21	[reopener]
More than two and less than four years of experience	\$43,965.01	\$44,844.31	"
More than four and less than eight years of experience	\$45,943.45	\$46,862.32	"
More than eight years of experience	\$48,010.88	\$48,971.10	"



2. ARTICLE 41, DURATION OF AGREEMENT

Section 41.1. Duration of Agreement. This Agreement shall be effective as of January 1 2014, ~~14~~, and shall remain in full force and effect through midnight, December 31, 2013 ~~16~~. Irrespective of any other provision of this Article, ~~the parties shall~~ **either party may** reopen negotiations on the subject of ~~Wages, Article 28, to be effective for years 2012 and 2013~~ **Insurances, Article 30, to be effective commencing in 2016 only**. This Agreement shall not be reopened for any other matter except wages **insurances**. A notice to negotiate for such reopener shall be filed by **either the City or** the OPBA with the State Employment Relations Board no earlier than August 1st and no later than October 31st of ~~2014~~ **2015**. These negotiations shall be conducted in accordance with Chapter 4117 of the Ohio Revised Code except that Section 4117.14(G)(11) of the Ohio Revised Code shall not apply and is expressly waived.

Section 41.2. Notice to Negotiate. If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days prior to nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by ~~certified mail with return receipt requested~~ **regular mail and/or email**. The parties shall commence negotiations within two (2) calendar weeks upon receiving such notice.

Section 41.3. Waiver. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining and that the entire understandings and agreement arrived at by the parties after the exercise of the right and opportunity are set forth in this Agreement. The provisions of this Agreement constitute the entire agreement between the parties.

Section 41.4. Signatures signed and dated at Fairlawn, Ohio on this ____ of _____, 2014.



Issue 2 - The City's proposed CBA language on Article 41, Duration of Agreement:

ARTICLE 41
DURATION OF AGREEMENT

Section 41.1 Duration of Agreement. This Agreement shall be effective as of January 1, 2014 and shall remain in full force and effect through midnight, December 31, 2016. Irrespective of any other provision of this Article, the parties shall reopen negotiations solely on the subjects of Wages, Article 28, and Insurances, Article 30, to be effective for year 2016. This Agreement shall not be reopened for any other matter. A notice to negotiate for such reopener shall be filed by either party with the State Employment Relations Board no earlier than August 1st and no later than October 31st of 2015. These negotiations shall be conducted in accordance with Chapter 4117 of the Ohio Revised Code except that Section 4117.14(G)(11) of the Ohio Revised Code shall not apply and is expressly waived.

Section 41.2 Notice of Negotiate. If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days prior to nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be by regular mail and/or email. The parties shall commence negotiations within two (2) calendar weeks upon receiving such notice.

Section 41.3 Waiver. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the entire understandings and agreement arrived at by the parties after the exercise of the right and opportunity are set forth in this Agreement. The provisions of this Agreement constitute the entire agreement between the parties.

Section 41.4 Signatures. Signed and dated at Fairlawn, Ohio on this ___ day of _____, 2014.



2013 Summit County Dispatch Wage Rate Comparisons

The Dispatch wages for comparable jurisdictions in terms of their closeness in proximity to Fairlawn and factors such as mutual aid response agreements are:

Barberton City	\$29,827.20 - \$42,723.20
Bath Township	\$34,120.51 - \$43,349.36
Copley Township	\$37,712.01 - \$45,646.41
Fairlawn City	\$41,246.84 - \$47,069.49
Norton City	\$36,712.00 - \$44,283.20
Richfield Village (2014)	\$39,737.00 - \$45,508.00
Southwest Summit Council of Govts	\$45,656.00

Dispatch wages for other jurisdictions in Summit County are:

Cuyahoga Falls City	\$42,307.20 - \$51,209.60
Green City	\$31,491.20 - \$36,233.60
Macedonia City (2014)	\$40,414.40 - \$50,315.20
New Franklin City	\$27,164.80 - \$31,678.40
Sagamore Hills Township	\$26,270.40 - \$44,345.60
Springfield Township*	\$29,208.00 - \$36,999.00
Stow City	\$34,174.40 - \$46,321.60
Tallmadge City**	\$34,174.40 - \$46,321.60
Twinsburg City	\$43,683.34 - \$50,389.06

*SCSO dispatches

**Stow dispatches



OPBA AND CITY OF FAIRLAWN

DISPATCHER NEGOTIATIONSSERB SURVEY
AKRON CANTON REGION
CITY DEPARTMENTS

JURISDICTION & CLASSIFICATION	RANK	2013 TOP PAY
FAIRLAWN PATROL	1	\$63,849.04
FAIRLAWN FIREFIGHTERS	1	\$66,871.63
FAIRLAWN LABORERS	1	\$56,464.65

DISPATCHERS	RANK	2013 TOP PAY
AURORA	1	\$52,374.40
CUYAHOGA FALLS	2	\$51,213.44
TWINSBURG*	3	\$50,389.00
DOVER	4	\$48,609.60
MACEDONIA*	5	\$48,360.00
FAIRLAWN	6	\$47,069.49

*SERB report does not identify 2013 rate for Twinsburg or Macedonia. The applicable rate is identified above. Hudson is not included in SERB ratings as their certification as a bargaining unit will not be issued until May. With the inclusion of Hudson, the Fairlawn Dispatchers would rank 7.

