

CASE # 2013-MED-09-0987

FACT FINDING REPORT & RECOMMENDATIONS

IN THE MATTER OF

OHIO PATROLMEN BENEVOLENT ASSOCIATION

AND

CITY OF CLAYTON OHIO

JERRY HETRICK, FACT FINDER

FOR OHIO PATROLMEN BENEVOLENT ASSOCIATION

MARK J. VOLCHECK, ATTORNEY

DANIEL HAMLIN, SERGEANT

FOR CITY OF CLAYTON

ROBERT PORTUNE, ATTORNEY

MARTINA DILLON, ATTORNEY

RICHARD ROSE, DIRECTOR, PUBLIC SAFETY

MATT HAMLIN, LIEUTENANT

DATE OF HEARING: JANUARY 30, 2014

DATE OF REPORT: FEBRUARY 12, 2014

BACKGROUND

This matter came up for hearing on January 30, 2014 before Jerry Hetrick appointed as Fact-Finder pursuant to Ohio Rev. Code Section 4117.14. The hearing was conducted with the City of Clayton and the Ohio Patrolmen's Benevolent Association. (OPBA). The bargaining unit in this matter is the Police Sergeants (3). The City and the OPBA are parties to a collective bargaining agreement governing terms and conditions of employment for the term of April 1, 2012-March 31, 2015. That agreement contains Article 29 Wages which provides for a reopening in the third year of the agreement

regarding wageW to be effective January 1, 2014. The parties engaged in mediation efforts but were unable to resolve either the wage or optional cash buy-back of universal leave issue. Both concurred that the Fact-Finder should issue a recommendation on the unresolved issues.

FACT FINDING CRITERIA

In the determination of facts and recommendations, the fact-finder considered the criteria required by the Ohio Rev. Code. Section 4117.14@ (4) (e) as follows:

- (1) Past Collective Bargaining agreements, if any between the parties.
- (2) Comparisons 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 classifications involved.
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed and the effects 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 private employment.

FINDINGS OF FACT AND RECOMMENDATIONS.

ISSUE-WAGES. The pivotal issue for resolution is the Wage issue. The City proposes a 1.5% wage increase. As a means of providing additional income the City proposes an optional cash buy back of 21.5 hours of accrued leave. According to the City, employees could add to their income by

approximately 1%. The Union proposes 4% wage increase and expressed no interest in the optional cash buy back. The Union believes the City's financial position does not threaten its ability to finance the 4% increase without a reduction in services to the public. The Union argues, correctly that the 4% increase averaged over the life of the agreement is only 1.8% as employees received no wage increase in 2013. What the Union does not acknowledge is that the ongoing future costs will be 4% higher not 1.8% coming into its renewal agreement. The City does not suggest that it has an inability to finance the Union proposal or would result in a reduction in services, merely that it is inappropriate to do so based on the recent history of long term trends in reductions in revenues and the continued rise in expenditures which requires a conservative approach to manage its General Fund balance, projected to decline by approximately 20% per year. The current collective bargaining agreement was negotiated in 2012. The conditions set out in City Exhibit 10 indicated the City would face a reduction in income from the General Property Tax, Local Government Distribution from the State and Inheritance Tax. The loss of Inheritance Tax is a permanent loss of \$197,140 from 2013 levels. It also showed Income Tax revenues to increase due to expansion by Caterpillar. The City has taken prudent steps to preserve its current fund balances by refinancing debt at lower interest rates and deferred certain maintenance and non essential purchases and expansions. Health care rates will remain unchanged due to arrangements with health care providers. The Union acknowledged the City's financial conditions when it accepted no wage increase in its 2013 re-opener.

It appears to the Fact Finder that the financial picture shows slight improvement. The estimated 2014 revenue loss from General Property Tax

will be \$2387 from 2013, substantially less decline than from 2011. The estimated revenue decline from the Local Government Distribution from the State will be \$7783 substantially less than the decline from 2011. The major loss of revenue comes from the Inheritance Tax elimination of \$197,140. Offsetting those income losses are increased revenues from Caterpillar expansion which peaked in 2012 and declined by \$23,000 or 1.3%. The City's bond rating of As is the second highest bond rating category indicating the City's obligations are of high quality and low credit risk. The City's income tax collections are projected to increase by 2.9% due to Caterpillar's expansion. Property tax collections will increase by 2.2% in 2014. However one time savings from certain budgeted expenses of \$114,530. The fact that the City offered a 1.5% wage increase acknowledges financial conditions are improving.

The City does not contend the Union's proposal is not within the City's ability to finance and administer. It does not argue that it cannot meet the Union's wage proposal. The bottom line is that the Fact Finder's review does not end with a finding the ability to pay factor is present with one or both proposals. The Fact-Finder is mandated to consider all statutory criteria applicable. One such criterion is comparability with similar units. The wage recommendation requires examination of external and internal comparisons for resolution. Nothing on the record establishes the cities constituting external comparables in the past. Normally Townships and Sheriff's Departments are not comparables as financing for these units typically differ from that of Cities. Both parties submitted external comparables. The City uses the SERB benchmark report for Sergeants in Montgomery County plus Warren County. The average for Sergeants is \$75,963.14 vs. \$73,144.50

paid to this unit or 3.7% below the average of the City's comparables.¹ For its part the Union comparables average \$77824.45 vs. \$73,144.50 or 6% below the average of the Union's Comparables.² Clayton ranks 7th among the City's comparables and 9th among the Union's comparables. By either the City or Union's external comparables this unit is paid considerably less. According to SERB data for 2012 wage settlements, police units wage increases averaged 1.2%. An examination of the Montgomery County sergeant's top pay for ten year employees reflects no wage increase of the magnitude sought by the Union.³ Only Vandalia received a 3% increase and that unit is significantly higher compensated than this unit. Several bargaining units saw a wage freeze in one or more years of their collective bargaining agreements. Moraine sergeants had three wage freezes. Huber sergeants received a 2.83 with two wage freezes the last two years. Oakwood & Riverside Sergeants saw wage freezes;⁴ Riverside sergeants received a 2% increase in the first year with a wage freeze the latter two years. Trotwood Sergeants received a 1% wage increase. West Carrollton sergeants received a 1.5% increase. Two cities, Dayton & Englewood, increased sergeant wages by 2%. Centerville & Kettering sergeants received a 2.3% & 2.5% increase respectively, however Centerville has twice-three times the population and compensates sergeants well above the average sergeant's level of compensation as does Vandalia. No data was provided regarding economic/financial data on Vandalia, Centerville or Kettering. It is a reasonable assumption that all are on a more solid financial footing than

¹ Comparisons with the Entire State ignore regional differences, sources of funding and regional economies. For that reason the Fact-Finder has discounted their value in making his recommendation.

² The Union's comparables included Oakwood Lts which have been removed by the Fact Finders to determine the average top pay of the Union's comparables.

³ Union Exhibit 6

⁴ While these Units saw wage freezes in two years, this unit has received a wage freeze in only one year.

Clayton. Noting that the Cities of Moraine, Oakwood, Riverside, and Huber received no wage increase, if these units are not included in computing the average wage increase for Sergeants, the remaining units received an average wage increase of 2.03% and are not supportive of the Union's proposal of 4%.

The Union advances support for its wage proposal citing compensation increases for internal comparables. In 2012 the Lieutenant's compensation was increased by 4.2% with the Assistant Fire Chief received a 3.9% increase. The Director of Public Safety who acts as the head of both Fire and Police Departments received a 4.5% increase in deferred compensation for his interim city manager position... The Union notes it not only should be able to make up lost ground for the 2013 zero increase but catch up against the 2012 supervisory increase. The City's Hearing Memorandum does not address the internal comparison with supervision. At the hearing the City indicated that the Lieutenant is not at the top step. Neither is the Assistant. The compensation increase to Fire Chief is more appropriately compared with that classification externally and the differential normally between the Assistant Chief and Firemen. Additionally the City notes the Assistant Fire Chief likewise was not at the top of his rate. The Fact Finder would discount the internal comparison with the Director of Public Safety due to having responsibilities over both police and fire departments. In the Fact Finder's opinion comparisons to these classifications is not strong enough to justify the Union's proposal.

Traditionally the Consumer Price Index is a factor considered in labor contract negotiations. The record establishes that the parties have normally increased wages to offset the rise in the CPI in 2008, 2009, 2010, 2011. The 2012 increase of 1.5% was somewhat below but not significantly the 1.7%

CPI. While the CPI is factor for consideration, it cannot rise to the level of importance of external comparisons and the City's economics. It is a guide not a compelling factor.

RECOMMENDATION –In the final analysis, having considered the City's financial condition, comparables both internal and external, and previous negotiations, the Fact-Finder recommends a 2% wage increase for wages for the period effective January 1, 2014 through the remaining term of this agreement which is March 31, 2015..

ISSUE-OPTIONAL CASH OUT OF ACCRUED LEAVE. The Employer proposes to allow, at employee option, to elect a one time lump sum cash payment of up to 21.5 hours of accrued leave (Short Term Leave, Extended Sick Leave, or Comp Time). If Comp Time is cashed out, payment shall be at 1.5 x the regular hourly rate. Other time shall be cashed out at the regular hourly rate. The employer proposal is essentially a cash advance on what is already in the employee's bank if and when accrued leave is necessary. It is not additional funds. According to the Union, two of the Sergeants are approaching retirement and plan on cashing out at that time. While the Employer's motive is admirable, the proposal represents a possible cash flow issue when the employer also limits its wage increase proposal. This proposal does not assist the Employer in its competitive relationship with other comparable employers, address operating issues that improves service to its citizens or reduces its debt. It has the possible effect of reducing the rainy day fund employees may require in emergencies. For these reasons the Fact Finder's recommendation does not include the Employer proposal of an Optional cash buyback of universal leave currently on its books.

Date of Award: February 13, 2014

Respectfully:

/s/ Jerry Hetrick

Jerry Hetrick, Fact-Finder

The Fact-Finder certifies the Report was served by email on February 12, 2014 to Robert Portune @buzz@gplawdayton.com and Mark J. Volcheck@markvolcheck@sbcglobal.com and SERB.