

FACT FINDING REPORT & RECOMMENDATIONS

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IN THE MATTER OF FACT FINDING
CASE # 2014-MED-08-0990

CITY OF OAKWOOD, OHIO & OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

FOR OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

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FACT FINDER: JERRY HETRICK

DATE OF HEARING: NOVEMBER 25, 2014
DATE OF RECOMMENDATIONS: DECEMBER, 28, 2014

BACKGROUND

The Ohio State Employment Relations Board (SERB) appointed the undersigned as Fact Finder of this public employment dispute between the City of Oakwood and the Ohio Patrolmen's Benevolent Association. The matter was heard on November 25, 2014 at the City's offices in Oakwood, Ohio. Both parties provided pre-hearing statements regarding respective positions regarding unresolved issues for inclusion in their successor to the expiring collective bargaining agreement. At hearing oral evidence and documentary exhibits were provided. Mediation efforts resulted in an exchange of proposals in an effort to reach agreement but ultimately the parties were unable to reach agreement on a

successor agreement. Both parties concurred that final positions would be provided the Fact Finder to make recommendations for the successor agreement

ISSUES

The following issues were presented to the Fact Finder for resolution: (1) Article 6-wages (2) Hospital & Medical Insurance (3) Article 22-Scheduling (4) Article 30 Duration ¹ Accordingly the following recommendations include the unresolved issues and incorporate all unchanged articles and provisions from the expiring collective bargaining agreement and all tentative agreements. All following agreements are made in accordance with the existing statutory factors incorporated in the SERB Rules and Guidelines: (1) past collectively bargained agreements between the parties; (2) consideration of 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 –At the conclusion of mediation and carried over to summary of unresolved issues, the principal issue in dispute is wages and specifically the breadth of the reopener in the second year of the agreement. The Union proposal acknowledges the City's sources of revenues have been declining and has been dipping into fund balances. That proposal acknowledges that the City has reduces its spending over the past five years and that residents have approved a 3.75 mill property tax increase. While fiscal conditions are improving, the City faces the effects of House Bill 5 regarding municipal income tax uniformity. That fact is not unique to Oakwood. Currently Oakwood has under consideration is whether to increase the City's 2.5% rate or limit the 100% credit given residents working in other taxing entities. The fact of inability to increase wages is

¹ OPBA's final proposal accepts no changes to the Memorandum of Agreement dated November 4, 2011.

not advanced by the City. The City proposes a zero wage increase effective November 4, 2014 and a 1.5% wage increase effective November 4, 2015. The OPBA proposes a wage freeze (zero increase) for November 1, 2014 but seeks an economic reopener in November 1, 2015 for any provision that has economic implications: Tuition reimbursement, Holidays, Vacation, Sick Leave, and Hospital & Medical Insurance. The City's wage offer is bottomed on the fact that City employees have generally taken two year wage freezes & that the Lieutenants should follow suit. The record before the Fact Finder indicates that the City's bargaining units and non union employees have accepted two year wage freezes while the City adjusts to new bargaining realities. The City's wage offer is consistent with the AFSCME unit which bargained a 1.5% wage increase for 2015 after two years of zero increases. The city's wage offer is consistent with the City's salary recommendation for all non union employees of 1.5%. Fact Finders are mandated to consider all statutory criteria applicable. One such factor relates to other public and private employees doing comparable work. Oakwood's public safety officers represented by the FOP/OLC were subject to the two year wage freeze. The AFSCME unit following the two year wage freeze has received a 1.5% wage increase as will the City's non union work force. City Exhibit I indicates the Captain Classification has a projected wage increase of 1.5% proposed for 2015. The factor of internal comparisons of the past/current wage increases to City employees doing comparable work favors the City's offer. Published SERB data indicates Fact Finder's Annual Average Award thru 2014 second Quarter averages 1.89% and seems to be trending upwards. While the City's offer is slightly below SERB settlements, the wage increase to the Lieutenants should avoid compression with the City's other Safety Services employees and keeps wages at or above other external comparables for the Lieutenants. It also lessens the need for substantial "catch up" increases in future negotiations.

RECOMMENDATION: The fact finder recommends a zero increase for the first year of the agreement and a 1.5% wage increase effective November 4, 2015.

ISSUE- HOSPITAL & MEDICAL INSURANCE

All City employees currently receive the same health insurance benefits & have the same amount contributed towards the monthly health insurance premium. The City has, and proposes to continue to treat all of its employees the same when it comes to health insurance benefits. The City proposes to retain the current contract language. The OPBA proposes a new Section 15.5 which puts the City's proposal in writing into the successor agreement. The Union's proposal provides "the employer shall continue to fund the employee's HSA account with the same percentage of the deductible and in the same manner as enjoyed by all other employees of the City. The Union's proposal merely puts into the collective bargaining agreement the City's promise.

RECOMMENDATION- In the final analysis, having considered the statutory factors, the fact finder recommends inclusion of the OPBA's proposal in the successor agreement. There is no additional cost as it currently is the City's practice to treat all employees's the same regarding health insurance and HAS contributions. It does not add to the City's ability either to finance or administer the Union's proposal. Given the City has asked for and obtained Union concurrence for two year wage freezes, the Union's proposal seems reasonable to the fact finder.

Article 15- HOSPITAL AND MEDICAL INSURANCE-SECTION 15.5

The Employer shall continue to fund the employee's HSA account with the same percentage of the deductible and in the same manner as enjoyed by all other employees of the City.

ISSUE-SCHEDULING

Article 22 provides the City with the right to "establish and change work schedules and assignments which it determines are necessary for the efficient operation of the Safety Department. When assigning employees to either a 24/48 or daily duty schedule, however, the city will take into consideration an employee's seniority (time in grade) as well as any specialized skills, training or other factors the city deems relevant in establishing the work assignment.

The training lieutenant shall work a daily schedule from 7:30 am to 4:00 pm with a 30 minute unpaid lunch. This does not limit the ability of the city to temporarily modify the schedule if training classes or other job related circumstances warrant.

Except under exigent circumstances, the city shall provide an employee at least thirty (30) days written notice when a schedule change, not including a permanent crew transfer, is implemented. An employee's schedule may not be changed for disciplinary, arbitrary or capricious reasons."

The City proposes the inclusion of Article 22 unchanged. It argues the Relief Lieutenant should be a rotational position with each of four lieutenants serving in the relief role for a period of time. It has communicated its intent to do this more than a year ago.²

The OPBA proposes changes to Article 22 based on the pending retirement of the Relief Lieutenant in early 2016. The OPBA's proposal for revised Article 22 is as follows:

"The parties acknowledge the City's right to change work schedules and assignments which it determines are necessary for the efficient operation of the Safety Department. When assigning employees to either a 24/48 or daily duty schedule, however the City will make such assignments on the basis of the following language:

The current incumbent in the Relief Lieutenant position will continue in his role until January 1, 2016. Thereafter, Command Staff will solicit preferences for the relief lieutenant position over a two week period during September of 2015. Such assignments will be awarded by preference based on seniority within the position classification. Nonetheless, the Public Safety Director or his designee reserves the prerogative and authority granted to him or her, by the Ohio Revised Code, the City Charter and the Collective Bargaining agreement(including but not limited to Articles 5 and 22.) The Director, in his sole discretion, retains the right to (re)schedule or (re)assign Lieutenants at any time or as circumstances, the public safety needs, staffing considerations or the best interests of the City may require. The Public Safety Director will not act in an arbitrary and/or capricious manner in exercising his discretion under this Section.

"The training Lieutenant shall work a daily schedule from 7:00am to 3:00pm with a 30 minute paid lunch. This does not limit the ability of the City to temporarily modify the schedule if training classes or other job related circumstances warrant. "

² City Post Hearing Brief, Page 8

“Except under exigent circumstances, the City shall provide an employee at least thirty (3) days written notice when a schedule change, not including a permanent crew transfer, is implemented. An employee’s schedule may not be changed for disciplinary, arbitrary or capricious reasons. “

The incumbent Relief Lieutenant is the most senior Lieutenant and has been in that position apparently 28 years. It is that pending retirement in early 2016 that gives rise to the OPBA proposal. The OPBA seeks to establish a definite contractual provision regarding staffing the relief lieutenant position. The Fact Finder agrees with the premise that a fact finder should be reluctant to impose contract language since his role is to supplement the bargaining process rather than supplant it. I am in further agreement that the burden is on the party proposing a change to show the present contract language has given rise to a condition that requires change and that such a change will not impose an unreasonable burden on the other party. The fact finder believes a condition exists which supports the OPBA’s request for a change in Article 22 and that condition is based on a concern over how the City will fill the relief lieutenant position, especially since it has expressed its intent to rotate the four lieutenants through that position. That possibility did not previously exist. Statutory factors lend support for change. Both internal and external comparisons dealing with how employee’s select schedules do so by seniority. Oakwood Public Safety Officers and Dispatchers are permitted to bid their shifts by seniority. Thirteen (13) External comparables in the surrounding also allow the use of seniority as a factor in shift selection. While these external comparisons do not provide police, fire, and EMS services in the same manner as Oakwood, Oakwood has made no showing that it cannot administer the Lieutenants collective bargaining agreement if it contains a provision regarding preference for seniority as a factor in determining shifts. It has made no convincing argument that allowing Public Safety Officers to select shifts by seniority has reduced flexibility or the ability to provide skills / certifications and ability needed.

Regardless of who fills the position of relief lieutenant or how that individual is selected, that individual will enter that position without previous supervisory experience and may well have a “learning curve”.

The OPBA's proposal provides for more than a procedure for replacing the retiring Relief Lieutenant following retirement. It eliminates the City's right to establish a work schedule other than a 24/48 or daily duty schedule as well as making the selection solely on the basis of seniority within a position classification among employees indicating a preference for the vacant position. It eliminates consideration for specialized skills, training or other factors the City may deem relevant, replaced by less specific wording such as arbitrary or capricious. Less noticeable is the change in the daily work schedule of the Training Lieutenant from 7:30 to 4:00 pm with a 30 minute unpaid lunch to a 7:00am to 3:00pm 30 minute paid lunch period.³ These consideration weigh heavily in the fact finder's recommendation.

RECOMMENDATION-ARTICLE 22

The parties acknowledge the City's right to establish and change work schedules and assignments which it determines are necessary for the efficient operation of the Safety Department. When assigning employees to either a 24/48 or daily duty schedule, however the city will take into consideration an employee's seniority(time in grade) as well as any specialized skills, training or other factors the city deems relevant in establishing the work assignment.

The current incumbent in the relief lieutenant position will continue in his role until January 1, 2016. However, the Command Staff will solicit preferences for the relief lieutenant position over a two week period during September of 2015. Such assignment will be awarded by seniority within position classification, provided the specialized skill, training or other factors required to perform the relief lieutenant position are relatively equal. Nonetheless the Public Safety Director or his designee reserves the prerogative and authority granted to him or her, by the Ohio Revised Code, the City Charter and the collective bargaining agreement(including but not limited to Article 5 and 22). The Director, in his sole discretion, retains the right to (re)schedule or (re)assign Lieutenants at any time as circumstances, public safety needs, staffing considerations or the best interests of the City may require. The

³ This aspect of the proposal was not discussed between the parties and Fact Finder.

Public Safety Director will not act in an arbitrary of capricious manner in exercising his discretion under this Section.

The training Lieutenant shall work a daily schedule from 7:30am to 4:00 pm with a thirty(30) minute unpaid lunch. This does not limit the ability of the City to temporarily modify the schedule if training classes or other job related circumstances warrant.

Except under exigent circumstances, the City shall provide an employee at least thirty (30) days written notice when a schedule change, not including a permanent crew transfer, is implemented. An employee's schedule may not be changed for disciplinary, arbitrary or capricious reasons.

ISSUE-DURATION-

Both the City and the OPBA modified their proposals for the duration of the Collective Bargaining Agreement. Both proposals are affected by their wage proposals. The OPBA has withdrawn its proposal for a three year agreement with wage increases in each of the three years. The Union proposes a Two Year agreement with a reopener on November 3, 2015 on all economic issues. The City counters with a Two year collective bargaining agreement with a wage freeze in year one and a 1.5% wage increase on **November 4, 2015**. Historically the OPBA and City have had three year collective bargaining agreements. Both parties' proposals recognize these are unusual bargaining times. Both proposals provide the City with economic relief in the first year giving the City time to adjust to declining sources of revenue, reduced spending, place certain city services on a fee basis, and adjust to the new 3.75 mill property tax for the upcoming year which has still left the City with a shortfall. The City has taken the additional step of seeking whether to increase the City's tax rate of 2.5% rate or limit the 100% tax credit for those employed outside the City. On the OPBA's side of the ledger, the bargaining unit has shown responsibility in accepting two years of wage increases while the cost of living has increased and cost of health care continues to increase although modestly per OPBA tab 10. When weighting both proposals the fact finder concludes that the City's proposal eliminates a measure of uncertainty regarding the future that the OPBA's proposal does not. The City's proposal allows predictability in financing a collective bargaining

agreement with more certainty than a wage reopener and has the additional factor of lessening the “catch-up pressures down the road. It places this Unit on the same footing wage increase wise as other bargaining units and non union employees. These factors weigh heavily in the fact finder’s recommendation for acceptance of the City’s proposal for the duration of the Agreement to be two years with the wage increase to be 1.5% wage increase effective in the second year of the Agreement.

RECOMMENDATION -Article 30-Duration

This Agreement shall be in full force and effect From November 3, 2014 through November 4 2016. This Agreement shall thereafter be renewed for successive one year periods unless written notice of a desire to renegotiate is give by either party to the other at least sixty(60) days but not more than ninety(90) days prior to October 31, 2016 or any subsequent anniversary date. Upon delivery of such a notice, the parties shall meet and negotiate with respect to a new contract, sufficiently in advance of the expiration date so as to enable the reach an agreement prior to expiration.

Respectfully:

/s/  _____

Jerry Hetrick, Fact Finder, December 28, 2014

The Fact Finder certifies the Report was served by email on December 28, 2014 to Jeffery A. Mullins (mullins@taftlaw.com) and Joseph M. Hegedus jmhegedus@sbcglobal.net

Cc. Donald M. Collins