

Before the State Employment Relations Board

In the Matter of:

Ohio Patrolman's Benevolent Association)	2014-MED-10-1364
)	2014-MED-10-1365
)	2014-MED-10-1366
and)	
)	Virgil Arrington Jr.
City of Sheffield Lake)	Fact Finder
)	
)	

Fact Finding Report and Recommendation

Issued March 5, 2015

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1 The Parties

The parties are the City of Sheffield Lake (City) and the Ohio Patrolman's Benevolent Association (Union). The Union represents three groups of employees: Police Patrolmen, Police Sergeants, and Dispatchers, each of which contains three members. The three groups, while distinct bargaining units, are governed by a single collective bargaining agreement.

2 Standard of Review

I am guided by the Ohio Administrative Code as to what I may consider, which includes the following:

1. Past collectively bargained agreements, if any, between the parties;
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, 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;
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 in private employment.

3 Status of Negotiations

The most recent contract between the parties expired on December 31, 2013. The parties did not immediately commence negotiations at that

time, as the City was pursuing an income tax increase, which was rejected by voters in 2013. The increase was finally approved in the May, 2014, election. Given the uncertainty of prospective income tax revenues, the Union requested to delay negotiations until after the election. The parties began negotiations in earnest in the summer of 2014. Prior to the fact-finding hearing, the parties reached tentative agreements on the following issues:

- Article 6 – Employee Rights
- Article 11 – Arbitration
- Article 12 – Non-Discrimination

During the fact-finding hearing, the parties reached additional tentative agreements on the following issues:

- Article 23 – Sick Leave
- Article 28 – Medical Insurance

At the request and agreement of the parties, I hereby incorporate their tentative agreements by reference as a part of my recommendation to the parties, and said agreements are included herewith as an Appendix.

In addition, at the beginning of the fact-finding hearing, the parties informed me that they were each withdrawing their respective proposals related to overtime.

After tentative agreements and the withdrawal of issues, the following issues remain to be resolved.

- Article 20 – Holidays
- Article 26 – Compensation
- Article 37 – Duration of Contract

4 Summary of Recommendations

As to the remaining issues, I make the following recommendations, as more fully discussed herein:

Article 20 – I recommend there be no changes to current language.

Article 26 – I recommend pay increases of 0% effective January 1, 2014, 2% effective January 1, 2015, and 2% effective January 1, 2016.

Article 37 – I recommend a three year contract extending from January 1, 2014, through December 31, 2016.

5 Article 20 – Holidays

The City has requested several language changes to Article 20, concerning holidays. This issue generated a fascinating discussion during the fact-finding hearing. The current contract language reads as follows:

ARTICLE 20 **HOLIDAYS**

Section 1. All employees provided for in this agreement shall receive the following days as paid holidays:

New Years Day	Martin Luther King Day	Easter
Memorial Day	Independence Day	Labor Day
Election Day	Thanksgiving Day	Day after Thanksgiving
Christmas Eve Day	Christmas Day	Employee's Birthday

Section 2. If an employee is required to work on any of the holidays listed above, he shall be entitled to pay for such time worked at his regular hourly rate of pay. All employees shall also receive one leveling off day for every holiday herein granted and shall be taken as vacation as needed. All leveling days off must be taken within the year earned.

The provision of holidays for police employees is more complicated than it is for non-safety force employees because police departments are operational around the clock throughout the entire year. Safety force workers cannot take a day off just because it happens to be a holiday. Therefore, other methods must be found to compensate them for holidays.

Sheffield Lake and the OPBA have chosen the above language as their agreed-upon method of compensating bargaining unit members for holidays. In practice, members are compensated for regular hours worked at straight time pay regardless of whether those hours are worked on a holiday. However, for each holiday, every member receives eight hours of holiday pay in the pay period in which the holiday falls, again regardless of whether the member works the holiday. In addition, for each holiday, all members receive one day off, contractually called a “leveling off day.” The result of this practice is there is no benefit to working a holiday.

The parties have suggested that those who work holidays receive “triple compensation” for the holiday (two days worth of pay and one day off) while those who do not work the holiday receive “double compensation” for the holiday (one day of holiday pay and one day off). That view of things is too narrow as it unnecessarily focuses on the holiday in a vacuum. When one looks at the work week as a whole, all members are compensated the same, regardless of whether they work the holiday. If a member works a holiday, it is because the holiday is one of the member’s regularly scheduled five work days in the week. If a member does not work a holiday, it is because s/he works five *other* days in the week. Either way, whether s/he works the holiday or not, each member works five regular work days each week and is compensated for five days at straight time pay. Thus, no member receives any financial benefit for working a holiday as compared to those who don’t work the holiday.

The parties agree that the contract language is not a model of clarity, and the City has suggested that the actual practice may not be consistent with the language. Regardless of the consistency of the language and the practice, the parties agree that the current practice has been in effect for at least 25 years.

5.1 City’s Proposal

The City has proposed to amend Article 20 to read as follows:

ARTICLE 20
HOLIDAYS

Section 1. All employees provided for in this agreement shall receive ***“leveling off time” in recognition of*** the following ~~days as paid~~ holidays:

- | | | |
|-------------------|------------------------|--------------------------------|
| New Years Day | Martin Luther King Day | Easter |
| Memorial Day | Independence Day | Labor Day |
| Election Day | Thanksgiving Day | Day after Thanksgiving |
| Christmas Eve Day | Christmas Day | Employee’s Birthday |

All employees shall receive one leveling off day for every holiday herein granted and which shall be taken as vacation as needed. All leveling days off must be taken within the year earned.

(Note: Above sentences moved up from Section 2).

Section 2. If an employee is required to work on any of the holidays listed above, he shall be entitled to pay for such time worked at his regular hourly rate of pay. ~~All employees shall also receive one leveling off day for every holiday herein granted and shall be taken as vacation as needed. All leveling days off must be taken within the year earned.~~

Section 3. ***In addition to the paid holidays set forth in Section 1, each employee shall receive one leveling off day in recognition of the employee’s birthday which shall be taken as vacation in the month of the birthday. (In calendar year 2015, employees with birthdays in January or February may take the birthday holiday within the first quarter of the year).***

The City is seeking an economic concession with this language change. Specifically, the City is seeking to eliminate the eight hours of holiday pay each member receives in addition to a day off for each holiday. Thus, under the City’s proposal, all members would receive *only* time off for holidays, to be scheduled along with vacation time.

The City has also proposed a scheduling change with respect to the employee’s birthday, which counts as the 12th holiday. Currently all reg-

ular time off, whether vacations, holidays, or birthdays, is scheduled annually in November for the following year. Eighty hours of holiday time are scheduled in two weekly increments. The remaining two days are scheduled as single days. While all time off is picked in November, the days off can occur at any time of the year. The City is requesting that birthdays be taken off in the member's birth month. It asserts this will prevent a problem of too many days off occurring in the final two months of the year.

5.2 Union Position

The Union prefers the current language in all respects. It argues that the City's proposal would result in the loss of 96 hours of compensation over the course of a year. Furthermore, as to the scheduling of birthdays, it claims that there have been no scheduling problems in the past. It further concedes that the Chief has discretion to deny any time off request if it would result in a staffing hardship on the department. Article 22 limits time off to one member of each bargaining unit at a time.

5.3 Recommendation and Discussion.

I recommend that no changes be made to Article 20.

I agree with the Union that, factually, the City's proposal would deprive members of 96 hours of financial compensation over the course of a year. Given a work year of 2080 hours, this would equate to a 4.4% reduction in pay, which would be repeated each year of the agreement.

The City complains that this Union is unique in receiving both compensation *and* time off for a holiday. I don't believe the benefit is as unique as argued by the City. In fact, if one thing is clear from the City's offered comparables, it is that there is no single holiday benefit adopted by cities. Rather, each city's benefit is unique. Some offer a choice between time off or premium compensation; others (such as Oberlin) appear to provide both time off and premium compensation for those who work holidays. One common theme I see in the comparable cities is that they all seem to reward those employees who work holidays with premium pay, anywhere from 1.5 to 2.5 times the employee's regular rate of pay. This is in recognition that working a holiday in itself works a hard-

ship on employees as they are separated from family members and missing other important events. By contrast, Sheffield Lake provides no premium to those who work holidays as opposed to those who do not. Moreover, when it comes to overall compensation, the City concedes that its police department is paid less than other departments of comparable size. The sting of this truth is eased to the extent that Sheffield Lake's holiday benefit may be somewhat richer than those of other cities.

The City maintains that its firefighters do not share this holiday benefit, and, based on the contract language provided, that appears to be true. However, firefighters inherently have benefits not shared by police officers, such as overtime pay for working a regular shift once every six weeks, in what is called a "Kelly day."

The Union points out that, even if the benefit is unique, it was negotiated many decades ago and remains a well-worn benefit. I agree. Under the current circumstances, and given the City's economic health, I cannot recommend that the Union be deprived of a long-standing and negotiated benefit without receiving something else of comparable value in exchange.

I agree with the parties that the current language is not a model of clarity. That said, neither party has recommended language, the purpose of which is to clarify any ambiguity; the City's proposed language does more than attempt to clarify. Were I to recommend specific clarifying language, I would be running a very real risk of producing unexpected and unintended consequences. It is enough that the language and practice have been in place for more than two decades without apparent problem. As inelegant as it may be, it has worked.

The City has also proposed that leveling off time given for birthdays be taken in the birth month of the member. The City maintains that such will prevent members from bunching up their time off in the last two months of the year. The Union maintains that scheduling birthdays has never been a problem.

I agree that there is insufficient evidence that the scheduling of birthdays has been a problem in the police department. The current language provides ample safeguards for the chief to prevent scheduling conflicts. Article 22 on its face prevents more than one member of each bargaining unit from being off at a time, and the Union concedes that the chief has discretion to deny time off requests. With these safeguards already in place, I see no reason to further change the language.

6 Articles 26 and 37 – Compensation and Duration

The issue of compensation is tied to the related issue of the duration of the contract as any increase in pay must be connected to an effective date for the increase. The Union has proposed raises of 3% for each year of a three year contract running from January 1, 2014, through December 31, 2016. The City has countered with a proposal to have a contract commence upon acceptance and ratification of the parties and continue through December 31, 2017. During that term, the City offers pay increases of 0% for 2015, 2% for 2016 and 2% for 2017.

6.1 Recommendation

For the reasons that follow, I recommend that Articles 26 and 37 be amended to read as follows:

ARTICLE 26
COMPENSATION

Section 1. Wages for bargaining unit employees shall be as set forth in Appendix A.

Wage increases for the contract term shall be as follows:

January 1, 2014 – 0%

January 1, 2015 – 2.0%

January 1, 2016 – 2.0%

[Remainder of Article 26 to remain unchanged.]

ARTICLE 37
DURATION OF AGREEMENT

This agreement shall be in full force and effect beginning January 1, **2014** through December 31, **2016**.

6.2 Discussion

The parties have offered different sets of comparables to demonstrate why their respective wage proposals should be accepted. It should be obvious to all that finding comparables that provide a true apples to apples comparison is next to impossible. I will use one comparable offered by both parties as an example of this difficulty.

Both the City and the Union compare this Union with Sheffield Lake's fire union. The Union has offered Union Exhibit 6, which indicates that, in 2014, the City's three full time patrolmen averaged \$57,340 in wages, including overtime, while the City's six full time firefighters averaged \$77,003, also including overtime. The Union, therefore, argues that patrolmen are underpaid compared to firefighters. The City counters with its own Exhibit 5-G,1, which indicates that the base rate of pay for firefighters is actually lower than that for police officers. The difference in overall compensation is due to the fact that firefighters are compensated for many more hours than are police officers.

The work year for the police department contains 2080 hours, whereas the fire department's work year has 2704 hours. Moreover, by the very nature of their jobs, firefighters work more overtime hours. Indeed, due to a quirk in the FLSA, once every six weeks, a firefighter's normal 24 hour shift is deemed overtime by law. Cities are then forced to either give the firefighter a day off every six weeks (called a "Kelly day") or pay overtime for the 24 hour shift. Firefighters in Sheffield Lake work their Kelly days, meaning that, once every six weeks, they are paid overtime for simply working their normal shift. They, therefore, have the opportunity to work much more overtime than do their police counterparts, resulting in much higher total compensation for the year, even though it is based on a lower rate of pay. Attempting to base wage increases on a comparison between this Union and the City's fire union is an all but futile undertaking.

And, yet, both the Union and the City have appealed to the fire union as a comparison. For its part, the Union is seeking a higher total compensation to bring police and fire employees into greater parity. The City, on the other hand, is using its recently concluded negotiations with the fire union as a pattern for its current proposal. Prior to the fact-finding hearing, the City had offered raises of 0%, 1.5%, and 1.5%. Shortly before the hearing, the City reached agreement with the fire union for raises of 0% in 2015, 2% in 2016, and 2% in 2017. It then modified its wage proposal at the hearing to match this obtained result. The Union counters by arguing that, since firefighters receive a higher total compensation, when including overtime, they were more able, and therefore, more willing, to agree to the City's compensation offer. Their willingness should not bind this Union which is operating under a different set of needs and circumstances.

Comparisons with other cities based solely on population as the criterion in common are equally difficult. Population alone does not tell the whole story. Also relevant are the relative demands on the police departments, the relative financial health of the cities, and the availability of other forms of compensation. Unfortunately, the population of a city offers very little information as to these other relevant criteria. That said, the Union argues with little resistance from the City that its members are paid below the statewide average when compared with other cities of comparable population. However, the City counters, and I agree, that in any such comparisons, *somebody* has to be below average in order for there to *be* an average, and cities should not be forced into playing games of wage leapfrog in never-ending attempts to constantly jump above the average.

6.3 Pay History Compared with Statewide Averages and Consumer Price Index

The following table demonstrates the wage increase history for this Union since 2008 as compared with the statewide average for police employees as well as the Consumer Price Index as shown on Union Exhibit 1.

	Sheffield Lake	Statewide Average	Change in CPI (Union Exhibit 1)
2008	3%	3.23%	3.8%
2009	3%	2.43%	-.4%
2010	3%	1.39%	1.6%
2011	\$750 Lump Sum	0.96%	3.2%
2012	0%	1.20%	2.1%
2013	0%	1.66%	1.5%
Six Year Aggregate:	9% (plus \$750)	10.87%	9%

Several items are notable from this history. First, this Union has not received a wage rate increase in the four years since 2010, lagging behind both the statewide average wage increase and the CPI. However, in 2009 and 2010, this Union enjoyed higher wage increases than the statewide average, and exceeded the CPI. The aggregate for the six year period shows that the Union has slightly exceeded the changes in CPI and fallen somewhat behind the statewide average for police department raises.¹

6.4 City's Economic Health

Both parties presented evidence concerning the City's economic health. The City provided financial records dating from 2007 through 2014. They show a relative flattening of revenues, with city-wide revenues hovering around the \$3,000,000.00 mark. The City points out that it has suffered from the loss of personal property reimbursement, public utility reimbursement and estate taxes. In addition, local government funds in 2014 were about half their 2007 level. Despite the loss of these revenues,

¹ It is difficult to cleanly translate the 2011 lump sum payment into a percentage increase as any translation will vary depending on each member's base rate of pay. In addition, being a lump sum payment, it would not have the same compounding effect of a regular wage increase.

income tax revenues have, with some fluctuations, generally increased with 2014 tax revenues being some 15% more than those collected in 2007. This increase has nearly offset the loss of other revenue sources.

This favorable income tax position should only increase in years to come. Effective July 1, 2014, the City's income tax rate was increased by 33%, from 1.5% to 2.0%. Although this rate may seem behind the times, Sheffield Lake only provides a .5% credit for taxes paid to other cities. In short, while other revenues have declined, the future of the City's income tax revenues appears brighter. The Union has provided a letter from Sargent & Associates (Union Exhibit 7), which estimates that income tax revenues will increase about \$500,000 per year from the rate increase. Although the City has not disputed this estimate, it projects overall 2015 revenues to be in the range of \$3,100,000.

The City states that revenues from the income tax increase will not be realized until the first quarter of 2015. It, therefore, has strongly resisted any discussion of pay increases for 2014 or 2015, stating that this is not a matter of frugality, but of survival.

I am not quite as pessimistic as the City. First, the increased tax rate has been in effect since July 1, 2014. Collections in 2014 were some \$140,000 higher than those of 2013. If the City is correct that it will not begin to realize the benefits from the tax increase until first quarter, 2015, then the picture is even rosier, for it would mean that none of the 2014 increase in income tax revenues was the result of the increase in the tax rate.

In contrast to this anticipated increase in Income Tax revenues, Sargent & Associates estimates a 1% wage increase for the Police Department (including non bargaining and part-time employees) to cost just over \$10,000 per year department-wide.

The Union complains that the Police Department's relative share of the City's budget has shrunk over the years, and the City's financial statements bear this out. In 2007, the Police Department accounted for approximately 36.5% of the City's expenditures; by 2014, this share had dropped to about 32%. The Union argues that the City has balanced its budget "on the backs" of its members.

Again, my outlook is not as gloomy as the Union's. While it is true that the members' wages have not increased since 2010, this seems to have been the case for all City employees; I have received no evidence of discrimination against OPBA members as to wage increases. Thus, the

Union's members have suffered no worse than other city employees when it comes to wages.

It is true that expenditures for the Police Department as a whole have shrunk when expressed as a percentage of the City's total expenses, but, this is attributed to attrition in the department. In 2008, the Police Department consisted of the following full time positions:

- 1 Chief
- 2 Captains
- 5 Sergeants
- 4 Patrolmen
- 4 Dispatchers

At present, the numbers are as follows:

- 1 Chief
- 0 Captains
- 3 Sergeants
- 3 Patrolmen
- 3 Dispatchers

This reduction in force has come about through retirements and resignations, not involuntary layoffs. While the Union complains that the City currently employs eight part-time officers, it also admitted that, it has always employed "eight-ish" part-time officers. The City readily admits that it uses part-time employees as a cost-savings device; indeed, this approach has helped the City weather the loss of revenues, and has had the side effect of preserving employment for its Union members.

It obviously is not my role to conduct a study of the staffing needs of the Sheffield Lake Police Department. I express no opinion as to whether the police department is understaffed today or was overstaffed in 2008. I comment on staffing levels only to demonstrate how it is that the City has managed to reduce expenditures and stay solvent despite the flattening of revenues.

In fact, the City's excellent management of its finances is reflected in its health care costs. On page 3 of City Exhibit 5-C, the City shows a 77% increase in the per employee cost of hospitalization from 2007 to 2015, and, yet, the actual amount paid for hospitalization for the entire police department actually decreased from \$186,936.00 in 2007 to

\$186,366.00 in 2014. This is no doubt the result of the reduction of the Police Department from sixteen full time employees to ten.

I commend the City for weathering the struggling economy without the need for layoffs. However, because the City has done so well controlling expenses, especially in the Police Department, I believe it can afford more than it has offered in 2015. I agree there should be no increase in 2014; without the benefit of the income tax increase, I don't believe an increase in 2014 is warranted. However, I am optimistic that a 2% increase in 2015 and 2016 will be more than covered by increased revenues from the Income Tax. The Union's demand of 3% raises is too ambitious and unsupported by evidence of any city providing 3% raises at this time.

Having agreed with the *amount* of the City's proposed wage increases, I agree with the Union's proposal regarding the term of the contract and, hence, the timing of raises. This contract should run from January 1, 2014, through December 31, 2016. As the City's revenues adjust to a new income tax rate, along with other revenue and expense adjustments that are bound to come in the coming years, I believe it unwise to lock in a wage rate for 2017 as proposed by the City. Economic changes between now and 2017 could cause the City to regret having offered 2% in that year, while at the same time, such economic changes could give the Union hope in seeking more. It is best to leave 2017 for a later day, when the parties have a clearer picture of all the relevant data.

/s/ Virgil Arrington Jr.
Fact Finder

March 5, 2015