

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of: : **2014-MED-10-1465**
: **FULL-TIME PATROLMEN**
Ohio Patrolmen's Benevolent :
Association : **FACT FINDING REPORT AND**
: **RECOMMENDATION**
and :
: **June 8, 2015**
City of Middleburg Heights :

APPEARANCES

For the Union:

Randy Weltman, Attorney
Steve Stervagi, Patrol Negotiating Committee
Nick McCoy, Patrol Negotiating Committee
Andrew Belzer, Patrol Negotiating Committee
Brent Lavinder, Detective Negotiating Committee

For the Employer:

William F. Schmitz, Attorney
Robert Downey, Executive Assistant to the Mayor
Jason Stewart, Finance Director

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I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on March 23, 2015, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties are the Ohio Patrolmen's Benevolent Association (OPBA) and the City of Middleburg Heights (City). Middleburg Heights is a city in southwestern Cuyahoga County. It is thirteen (13) miles southwest of Cleveland with a population of approximately 16,000. The bargaining agreement in this matter includes all full time Patrolmen. The OPBA represents the twenty-nine (29) sworn Police Officers in the bargaining unit, which currently includes twenty (20) Patrolmen, five (5) Sergeants, and four (4) Lieutenants. The parties have had a collective bargaining relationship for twenty-five (25) years.

II. THE HEARING

The conciliation hearing was held on Friday, April 24, 2015 at the Middleburg Heights City Hall, 15700 Bagley Road, Middleburg Heights, Ohio. Each party provided a pre-hearing statement. The hearing began at 10:00 a.m and adjourned at approximately 2:30 p.m. The parties jointly introduced into evidence the Collective Bargaining Agreement between the City of Middleburg Heights, Ohio and the Ohio Patrolmen's Benevolent Association (Patrolmen) Effective: January 1, 2013 - December 31, 2014. Each party made a presentation to the Fact Finder. All tentative agreements reached by the parties prior to fact finding are hereby incorporated into this award.

In addition to the Agreement between the parties, they introduced the following exhibits:

City Exhibit

- A. An Agreement between The City of Middleburg Heights, Ohio and The Ohio Patrolmen's Benevolent Association (Patrolmen), Effective: January 1, 2013 Expires: December 31, 2014.
- B. City of Middleburg Heights, Ohio Schedule of Year-End Fund Balances - "Operating Funds" Last Twenty Years.
- C. City of Middleburg Heights, Ohio Schedule of Revenues, Expenditures, and Changes in Fund Balances Last Ten Years.
- D. City of Middleburg Heights, Ohio Schedule of Revenues, Expenditures, and Changes in Fund Balances Five Year Forecast (2015-2019) as of 4/16/2015.
- E. City of Middleburg Heights, Ohio Health Insurance Costs Last Ten Years.
- F. November 14, 2104 Letter from The Fedeli Group re January 2015 Health Insurance Renewal.
- G. Comparables Chart.
- H. Contribution Insurance.
- I. Ohio Administrative Code Section 139.22.
- J. Wage Comparison Example.
- K. 2014 Comparison - Police Officers.
- L. City of Middleburg Heights Ordinance No. 2015-10.
- M. Other collective bargaining agreements.

OPBA Exhibits

- 1. City of Middleburg Heights Comprehensive Annual Financial Report For The Year Ended December 31, 2013.
- 2. Comparison of Benefits for ten year Patrolman - Northeast Ohio Suburbs' Best Paid Patrol Officers.
- 3. Contribution Rates - Ohio Police and Fire.
- 4. Ohio Administrative Code Section 139.22.

5. Article from cleveland.com - Cleveland's outer-ring suburban mayors top survey: What Mayors Make.
6. Fact Finding Report in City of Middleburg Heights and Ohio Patrolmen's Benevolent Association, Case No. 06-MED-10-1264.

The issues remaining at fact finding were:

1. Section 19.01 - Educational Leave.
2. Section 19.06 - Compensatory Time.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making an award. The criteria are set forth in Rule 4117-9-05(K) and are:

- (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; and
- (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.

III. ISSUES AND AWARD

Introduction

The City has a significant corporate, commercial, and service sector tax base. Southwest General Hospital is the largest employer and the Cleveland Clinic has four (4) facilities within the City. Metro Health System opened a new health center in 2013. FedEx and UPS are also major employers. During 2013, Middleburg Heights's bond rating was renewed with an Aa1 rating, the highest it has ever received. Income tax revenues increased 5.13% in 2013. At the conclusion of 2103, its General Fund unreserved balance was \$7,392,204.00, representing 43% of its expenditures.

The City's population of around 16,000 has a median income of approximately \$52,357.00, which is about \$4,500.00 more than the Ohio average of \$46,829.00. The average house or condominium value in 2012 was \$153,132.00. Middleburg Heights emerged from the 2008 recession without cuts in service or layoffs. However, the Year-End Cash Fund Balance has been declining and is predicted to continue declining. It was \$12,992,068.29 in 2000 and remained between \$6,000,000.00 and \$7,000,000.00 from 2004 through 2012 due to revenue increases from an income tax hike and windfalls from the Ohio Estate Tax. While the residents voted to raise the income tax from 1.75% to 2.0% in 2007, the estate tax has been repealed. Additionally, the State of Ohio has cut its funding to local governments. From 2007 to 2009, City Council twice reduced capital spending by 50%. In 2013, the City issued \$5,860,000.00 in bonds to improve streets that had gone without repair for several years, but this money has been spent. By the end of 2015, the carryover is projected to be \$6,757,358.62. The City projects a decline in its Year-End Fund Balance for the next three (3) years, to a low of

\$3,029,060.00 in 2018, the lowest level since 1995. If this projection is accurate, the balance will be only 9.6% of projected expenditures.

The OPBA and the City have had a collective bargaining relationship for over twenty-five (25) years. Over the years, the OPBA has been able to negotiate the bargaining unit's pay package to just above average in relation to contiguous jurisdictions. The OPBA asserts that, compared to Cuyahoga County's prosperous suburbs, the package needs to be increased to remain above average. It seeks to improve the package in part because each bargaining unit member's pension obligation increased by 1.5% and will increase another .75% in July 2015. The combination of mandated pension increases and inflation in general has resulted in little to no wage growth over the last few years. The City's non-union personnel have not had increases in pension contributions. Non-union employees also enjoy an annual education bonus that is a percentage of their earnings, not the flat bonus provided to OPBA members.

Middleburg Heights negotiates collective bargaining agreements with three (3) separate bargaining units. Besides the OPBA, the City's Firefighters and its Public Service Department employees are represented. All three (3) bargaining agreements expired on December 31, 2014 and negotiations for all three (3) began last fall. The Firefighters and Public Service Department employees agreed to two (2) year contracts with a two percent (2%) increase in each year and modest increases in health insurance co-pays and deductibles. The City's non-Union employees received the same two percent (2%) increases, co-pays, and deductibles. It should be noted that the City's 2015 health insurance cost increased by 4%. Middleburg Heights still does not require its employees to pay an insurance premium.

Issue: Section 19.01, Education Bonus

OPBA Position: Convert the flat bonus to 2% of base pay.

Middleburg Heights Position: Retain current language.

Findings: The OPBA submits that the bargaining unit's community of interest is more aligned with non-bargaining employees than the other bargaining units. The City's Patrolmen must possess a Bachelor's degree in Criminal Justice or a related field to be considered for employment. This requirement has been in effect long enough that most of the bargaining unit, twenty-one (21) of twenty-nine (29), hold at least a Bachelor's degree. The City's high standard was designed to create a Police Department of highly competent officers capable of performing at a high level at all times. This goal has been accomplished as the Department enjoys a fine reputation and gets very few complaints and lawsuits. The unit is essentially a professional one, whose members could have gone into other professions just as easily as they became Police Officers. The OPBA proposes that the education bonus be modified to more closely resemble the benefit granted to non-union personnel. That is, it proposes to make it a percentage of earnings, not a flat fee. The City insists that it offer the same to this bargaining unit as it has to its Firefighters and other bargaining units. While not sub-standard, it is not appropriate for this unit, as Firefighters and other bargaining units are not required to have a college degree to become employed.

The bargaining unit wants real wage growth. The OPBA and the City have a good relationship, but the City already has agreements with the Firefighters and other units for two years with 2% increases. That is insufficient for this unit. Prosperous cities in Cuyahoga County are doing better than 2% this year and next year. Pattern

bargaining is not as important in the public sector as it was. Some non-skilled public employees are competitive with private sector employees, but there is no private sector comparison to this unit of Patrol Officers. It is a professional group and compares better with professional non-bargaining unit employees. If the City's position is to follow a pattern, then this unit wants the pattern given to City Hall employees. The difference between the current flat bonus and 2% is \$590, or .08% of base pay. The total would be approximately \$15,000. Plus pension and other markups, the total would be \$18-\$20,000.

Currently, Patrolmen receive \$850 for a Bachelor's degree and \$1100 for a graduate degree. Middleburg Heights argues that the pattern shows a dwindling carryover for the next several years. The Union's position ignores that the City employees do not pay health insurance premiums. Paying out what the OPBA wants erases any cost savings to the City from health insurance changes. Furthermore, it is likely that, should the Fact Finder recommend additional pay to this unit, other bargaining units would want further increases. Contrary to the OPBA's argument, Police Officers have more in common with Firefighters than administrative employees. Both must pass a civil service exam and are part of the same pension fund. The Fact Finder should follow the pattern of wages negotiated with the other targeting units.

The Fact Finder agrees with the City that the Patrolmen share a community of interest with the Firefighters rather than administrative employees. Thus, pattern bargaining is an important factor. In this case, however, the parties have recognized a difference between the units: Patrolmen are required to have a college degree, while Firefighters are not. That recognition comes in the form of an education bonus. The

City's non-union employees also receive an education bonus for college degrees based on a percentage of salary, but this is the only factor making the Patrolmen and non-union employees alike. In most other respects, the Patrolmen are similar to the Firefighters. As the City points out, both units must pass a civil service exam and are part of the same pension fund. They follow a command structure and wear uniforms. Most important, though, is that they protect and serve the public.

Additionally, Police Officers enjoy some benefits that non-bargaining unit employees do not. For example, they may get shift premiums, opportunities to work in a higher classification and receive higher pay, call-in pay, and so forth. This unit is entitled to holiday sellback, sick leave conversion, longevity pay, uniform allowance, officer in charge and shift differential, and overtime and compensatory time sellback. These provide additional income that non-union employees do not receive. Converting the education bonus to a percentage of basic pay such as the administrative employees receive would be one (1) more advantage the Patrolmen would receive compared to the administrative employees. The Fact Finder concludes it would be inappropriate to do so at this time.

Further, the parties disagree as to which municipalities are comparable to Middleburg Heights and where the unit falls in terms of pay compared to other municipalities. The OPBA points to cities such as Mayfield Heights, Highland Heights, Solon, and Westlake, while the City looks to the surrounding communities of Brecksville, Strongsville, Berea, Fairview Park, North Olmsted, Brook Park, North Royalton, and Parma. Using the Union's comparables, the unit is somewhat underpaid. Considering the City's, the Patrolman are above average in overall earnings. This does not take into

account that City employees do not pay a health insurance premium. The comparables presented by the City indicate that Police Officers in the surrounding communities pay some premium, except for those in Brockville on the White Plan. The OPBA's comparables do not show health insurance premiums. Based on the Fact Finder's experience, though, it is likely the Police Officers in these communities pay something toward health care insurance. In short, this boosts the take home pay of the bargaining unit here and must be considered.

Finally, the OPBA argues that pattern bargaining is not as important a factor as it was. It introduced a fact finding report in City of Middleburg Heights and OPBA, 06-MED-10-1264 by Nels Nelson. Fact Finder Nelson recommended a higher wage increase for the Patrolmen in Middleburg Heights than another Fact Finder had recommended for the City's Firefighters. He did so based on other, comparable Police Officers in Cuyahoga County. The OPBA suggests that this Fact Finder should not follow the pattern given to other City employees and modify the education bonus. The Fact Finder disagrees. The issue here is not between one (1) bargaining unit and another, it is between this unit and a non-bargaining unit, the administrative employees. This unit already receives an education bonus that other bargaining units do not. As noted above, the Association has not shown that this unit shares a community of interest with the administrative employee rather than other bargaining units, particularly the Firefighters. On this record, the OPBA has not shown a need for an increase in the education bonus.

Recommendation: Retain current language.

Issue: Section 19.06, Compensatory Time

Position of the OPBA: Increase the number of compensatory hours paid to employees in the Detective Bureau and Accident Investigation unit from four (4) hours to eight (8) hours.

Position of Middleburg Heights: Retain current language.

Findings: According to the OPBA, this proposal applies mostly to Detectives. There are four (4) employees in the Detective Bureau, one (1) Lieutenant and three (3) Detectives. One (1) of the three (3) Detectives is on call for a month at a time, from 4 PM to 7 AM and all day on Saturday and Sunday. Not all of this time is subject to overtime. For instance, a Detective may receive a phone call from a supervisor, which may avoid having to call the Detective in. During the month on call, the Detective must stay relatively close to the City. Generally, he or she must respond within one (1) hour of being called in. The Detective is subject to being called at any time and cannot have a beer in the afternoon or a glass of wine with dinner. Four (4) hours of compensatory time does not adequately reimburse the Detective for the on-call time.

Middleburg Heights responds that the Detectives and Accident Investigators are well compensated and receive four (4) additional hours of compensatory time for the time they are on call. It has established a pattern with regard to the economic benefits it can afford to provide its employees and must be conscious of its bottom line as carryover funds continue to dwindle. Middleburg Heights is generous with its employees, but current economics require some belt tightening. It urges the Fact Finder to follow the pattern bargaining.

The OPBA has demonstrated a need for the additional compensatory time. A month is a long time to be on call and can disrupt an employee's home life, vacation plans, and other events. During that month, the Detective on call must remain local, cannot enjoy an occasional drink, and is subject to being called in at any time during the evening and night. Additionally, the Detective may receive phone calls for which he or she does not receive overtime. The Fact Finder concludes that four (4) additional hours of compensatory time is not too great a cost to compensate for being on call for a month.

Recommendation: Section 19.06 is to be amended as follows:

Effective January 1, 2015, any officer who is assigned to the Detective Bureau or Accident Investigation and who is designated as being "on-call" shall be compensated in the amount of eight (8) hours of compensatory time for each month of such on-call assignment.

Dated: June 8, 2015



Daniel G. Zeiser
Fact Finder