

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
August 12, 2016

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| In the Matter of: |) | |
| |) | |
| Teamsters Local Union No. 637 |) | |
| |) | SERB Case Nos. |
| |) | 15-MED-06-0606 |
| vs. |) | 15-MED-06-0607 |
| |) | 15-MED-06-0608 |
| |) | |
| City of Wellston |) | |
| |) | |

APPEARANCES

For the Teamsters Local 637:

Susan Jansen, Esq., Union Advocate
Greg Ritterbeck, Teamster Local Union 637
Roy Roberts, Bargaining Team Member
Robert Peterson, Bargaining Team Member

For the City of Wellston:

David Riepenhoff, Esq., City Advocate
Connie Pelletier, Mayor City of Wellston
Shannon Webber, Law Director City of Wellston

Fact Finder: Dennis M. Byrne

Background

The fact-finding involves the City of Wellston (Employer/City) and the eight (8) full time Police Patrolmen and Dispatchers in the Wellston Police Department represented by the International Brotherhood of Teamsters Local 637 (Teamsters/Union). The parties held four (4) negotiating sessions in an attempt to find mutually agreeable language for a successor agreement for their contract that expired on December 31, 2015. In spite of their efforts, the parties were unable to reach agreement; and ten (10) articles remain on the table. The open articles are: 1) Article 12: Layoff and Recall; 2) Article 13: Miscellaneous – Non Economic; 3) Article 14: Hours of Work; 4) Article 15: Wages; 5) Article 17: Longevity; 6) Article 18: Holidays; 7) Article 23: Insurance; 8) Article 24: Educational Incentives; 9) Article 26: Miscellaneous – Economic and 10) Article 34: Duration. It should be noted that a number of the open articles listed above have more than one demand associated with the Article; and consequently, there will be more than ten items discussed in this report.

The parties had two (2) meetings with the Fact Finder. The first meeting was on February 19, 2016. This meeting was devoted to a mediation effort and was partially successful because the parties held a wide-ranging discussion about the issues and reached tentative agreement of some of the open items. However, the parties were unable to reach a final agreement, and they scheduled a formal Fact finding hearing. The Hearing commenced at 10:00 A.M. on Thursday June 23, 2016 at the Wellston City Hall. The hearing ended at approximately 1:00 P. M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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.

Introduction:

The major reason for the disagreement between the parties is the economic condition of the City. Wellston is currently in Fiscal Emergency status. The State Auditor declares fiscal Emergency when a governmental unit is no longer able to meet its financial obligations. Wellston has been in Fiscal Emergency status since October 1, 2009. Fiscal Emergency means that any expenditure made by the City must be approved by the State Auditor's Office.¹

The City has been in Fiscal Emergency for approximately seven (7) years and it has seen massive layoffs, and been forced to reduce the services that it offered its citizens. In addition, the City has gone through at least two (2) negotiation cycles with its remaining unionized employees, and the employees have had their wages frozen and some benefits reduced. The union membership effectively negotiated a one (1.0%) percent increase from 2013 through 2015.

¹ A Fiscal Emergency ends when the State Auditor declares that the local government is able to operate in a responsible manner and pay its bills and maintain reasonable balances in its financial accounts. Wellston is planning on asking the Auditor to end the Fiscal Emergency in the near future, but at this time the City is still in an emergency situation.

That is the background to the current negotiations between the City and the members of Local 637. The Union members believe that they deserve a significant wage increase and increased benefits. This is especially true because when the police officers affiliated with the Teamsters, the City became eligible to join the Michigan Conference of Teamsters Health and Welfare Fund, and the move to a new insurance carrier is projected to save the City a significant amount of money. The Union argued that, at a minimum, its membership should gain some benefit from the savings generated by the new insurance plan.

The City agrees that the Fiscal Emergency has affected all of its employees. The City understands all of its employees' frustration with the current situation in Wellston. However, the City argues that the reality of the situation is that there is not enough money to substantially increase wages and benefits, and there are only limited funds available to meet all of its employees' legitimate demands. The City contends that the reality of the situation is that it cannot meet the demands put forth by the Local 637 membership.

In addition, as economic conditions and as the relationship changed over the years, the parties believed that there was a need to make a number of language changes to the contract. However, given the overall financial condition of the City, the parties have been unable to incorporate their desired language changes into the contract. Unfortunately, the City is still in Fiscal Emergency; and thus, the status quo becomes a reasonable way to move forward to the next round of negotiations. That is, current contract language may not exactly express the desires of the parties, but the language in question has sufficed for a number of years.

Issue: Article 12.1 - Layoff and Recall

Union Position: The Union rejects the City's demand and counter with the status quo.

City Position: The City demands changes to Section 12 (B)(3) that would change how employees are laid off, in the event that layoffs become necessary. The City suggested changes also would allow it to subcontract work currently performed by Union members.

Discussion: This demand is based on a situation that occurred a number of years ago. Massive layoffs became necessary and the language of Article 12.1(B) (3) became a source of disagreement between the parties. Ultimately, the dispute led to an arbitration hearing. The Arbitrator's Award allowed the City to layoff some members of the Police Department. The City wants to amend the language of 12.1 (B)(3) to allow the City to layoff employees at its discretion and subcontract some work currently performed by the Union membership. It must be stressed that the City stated that there are currently no plans to layoff any employees.

The Union disagrees with the City's suggested language changes claiming that there is no reason for the deletion of the subcontracting language and allowing the City to determine the order of any layoff at its sole discretion. That is, the Union believes that the contract should determine the order of layoffs.

This is one of the articles of the contract that will probably need to be examined sometime in the future. Currently, there are no plans to layoff any employee, and the Arbitration Award referenced by both the parties gives guidance of how layoffs should occur if layoffs again become necessary.

Therefore, the Fact Finder understands the parties' position on this issue, but given the fact that the City stated that it had no intention of laying off any employees, and

in light of the fact that the Union objects to the City's suggested language changes, the Fact Finder does not believe that the City proved that there was any reason to change the current language.

Finding of Fact: The City did not prove that there was a need for its suggested language changes at this time.

Suggested Language: Current Contract Language

Issue: Article 13(4) – Firing Range

Union Position: The Union demands that City pay for all the costs associated with firearms qualification training.

City Position: The City rejects the Union's demand and counters with current contract language.

Discussion: The City's position is that this is an economic issue; and while the City understands the Union's position, it argues that it is unable to make any economic concessions at this time. Therefore, this is one of the contract provisions that is being held hostage to the realities of the City's fiscal problems, and it should be discussed when the City's finances improve. That is, the Employer often pays for firearms training and sometimes pays a qualification bonus. However, at this time, the Fact Finder cannot recommend the Union's position based on the reality of the City's financial condition.

Finding of Fact: The City's financial problems preclude the paying of a firearms qualification bonus (Pro Pay) and the costs associated with firearms training.

Suggested Language: Current Contract Language

Issue: Article 14 (2) – Hours of Work

Union Position: The Union demands that the current shift bidding procedure found in the contract be maintained. That is, the Union rejects the City's demand to modify how shifts are selected. The Union also proposes to delete the section that excludes the position of canine officer from the shift bid procedure.

City Position: The City demands that the Police Chief be allowed to schedule the officer's shifts at his sole discretion, and rejects the Union's proposal regarding the canine officer.

Discussion: The contract currently allows for shift bidding based on seniority every three (3) months. The current language allows certain officers to be assigned based on the qualifications of the officers and the needs of the employer. The contract specifically references the school resource officer and the canine officer. In addition, the parties discussed the officers who worked in drug interdiction, etc. The City argues that it should have the ability to set the schedule of the officers in order to maximize efficiency and fairness.

The Union argues that in a situation where the employees cannot bargain for significant wage and benefit changes, that scheduling is one area where the union members have the right to express their opinions. The Union also contends that the current scheduling system has not caused problems.

The Fact Finder believes that both parties have legitimate positions. In an instance like this, the free give and take of negotiations, and the trade offs that ensue usually lead to a settlement that works to the advantage of both parties. However, in Wellston at the current time, there are no realistic tradeoffs because of the Fiscal

Emergency. Therefore, based on the fact that neither party expressed great enthusiasm for the current situation, but there is also no specific reason put forth by the Employer that justifies its demand in face of the Union's rejection of the demand, the Fact Finder is recommending current contract language on this issue.

Finding of Fact: Neither the City nor the Union proved that there was a need for its suggested language change.

Suggested Language: Current Contract Language

Issue: Article 14(5) – Court Time

Union Position: The Union demands an increase in the minimum number of hours an officer is to be paid for any job connected court appearance while off duty.

City Position: The City rejects the Union's demand and counters with current contract language.

Discussion: The Union demands that any member of the bargaining unit who attends court in an official capacity be paid a minimum of four (4) hours of court time.

Currently, the contract states that the union member will be paid three (3) hours for attending court. The Union argues that the three (3) hour limit has been in the contract for a number of years and that it should be increased. In addition, the Union contends that the disruption caused by the need to attend a court session while the member of off duty creates a hardship on the affected employee and that he/she deserves another hour to recompense him/her for the disruption caused by "working" on scheduled time off.

The City's position is that the Union has not proven why an increase in Court Time is appropriate and that it is an economic issue; The City is unable to give economic

concessions at this time. Union members already receive a minimum three (3) hours pay for court time, which is a standard amount and appropriate in the circumstances.

The Fact Finder understands the Union's position on this issue. However, the current payment is not substandard. Moreover, this is an economic issue and the Fact Finder does not believe that the City can afford to fund this demand while it is in Fiscal Emergency.

Finding of Fact: The Union did not prove that there was a need to change the language of Article 14 (5) at the present time.

Suggested Language: Current Contract Language

Issue: Article 14 (7) – Special Details

Union Position: The Union demands that the phrase “filled by seniority” be added to the language.

City Position: The City rejects the Union's demand and counters with current contract language.

Discussion: The current language states that the Chief will fill any request for a special assignment from a list of the bargaining unit members. The Union wants to add that the requests will be filled based on seniority. Usually special details are a way that the bargaining unit members can supplement their income. The standard way to fill the details is by offering the detail to all bargaining unit members listed by seniority. The Chief goes down the list looking for volunteers for the assignment. Once he has rotated through the entire list, he goes to the top and starts another rotation. As a result, every bargaining unit member has a chance for a special assignment before any other

bargaining unit member has a second chance to work a detail. Therefore, the way that the system works is equitable to all bargaining unit members.

The Union's demand is that the members are asked by seniority if they desire an assignment. This language implies that the Chief starts at the top of the list for each assignment. If this is the intent, then the suggested language would lead to an equity problem, i.e., if the Chief does not rotate through the entire department, then that is inequitable.

The current language is reasonable as long as the language is interpreted to give all union members an opportunity to work special assignments. Therefore, the current language works as well as the Union's alternative language.

Finding of Fact: There is a standard way to assign special assignments

Suggested Language: Current Contract Language

Note: The Fact Finder recommends that the Department institute a rotation for all members if that is not the way that special details are assigned.

Issue: Article 15 – Wages

Union Position: The Union demands an increase of five (5.0%) percent in base rate increase for each year of the proposed contract.

City Position: The City is offering zero (0.0%) percent in the first year of the proposed contract and one (1.0%) percent in the base rate for the second and third years of the proposed contract.

Discussion: The Union's demand is based on its argument that the union membership's wages have been frozen for a number of years. In addition, the Union believes that since

it brought the Teamsters Michigan Health Insurance Consortium to the City's attention, that it should benefit from the savings generated by membership in the plan. The Fact Finder understands the Union's position and frustration. However, no other member of the City has seen a wage increase of the magnitude that the Union is demanding. In addition, the City's Fiscal Recovery Commission exercises oversight with respect to whether the City adheres to its Financial Recovery Plan and such an increase could jeopardize that Plan. Therefore, the Union's demand is unreasonable when all the facts are considered.

The City has offered zero (0%) percent in the first year of the prospective contract and one (1.0%) percent in years two and three. The City's financial condition has brightened because of the actions taken by the Mayor and the City Council. Therefore, the City's offer seems somewhat conservative. Consequently, the Fact Finder is recommending a one and three-quarter (1.75%) percent increase in each of the first two years of the prospective contract and a wage reopener in the third year. The Fact Finder has examined the data supplied by the parties and believes a raise of this magnitude can be funded by the City, and will not create problems with the City's attempt to emerge from Fiscal Emergency. The City's outlook in the intermediate term is murky. If the local economy continues its rather slow rebound, then the City's finances may improve. On the other hand, if the economy slows or there is some other unforeseen event, then the City's financial condition may weaken. Consequently, the Fact Finder is recommending a wage reopener in the third year of the proposed agreement based on the uncertainty about the financial situation in Wellston in the coming years.

Finding of Fact: The City can afford to increase the base wage rate by one and three-quarters (1.75% percent in the first two years of the prospective agreement.

Suggested Language: The wage scale in Article 15 shall be amended to show a one and three quarters (1.75%) percent increase retroactive to January 1, 2016, and a one and three quarters (1.75%) increase effective January 1, 2017, and a wage reopener effective January 1, 2018.

Issue: Article 17 – Longevity

Union Position: Longevity should be reinstated.

City Position: Longevity should be reinstated.

Discussion: Longevity was frozen during the term of the last contract under the terms of an MOU signed by the parties. The MOU was allowed to expire and the parties did not negotiate another agreement. Consequently, longevity is reinstated and the officers are placed on the scale depending on their tenure with the Employer. There was no debate on this issue.

Finding of Fact: There is no dispute on this issue.

Suggested Language: The Longevity scale (Article 17) will be reinstated.

Issue: Article 18: - Holidays

Union Position: The Union demands current language.

City Position: The City demands that the employee cannot call off sick from his/her scheduled shift before and after a holiday to be eligible for holiday pay. In addition, the City demands that one holiday (Police Memorial Day) be deleted from the contract

Discussion: The City's demand for the deletion of the Police Memorial Day holiday would reduce the number of holidays in the contract from 12 to 11. The rationale is the OCSEA bargaining unit gave up a holiday and now has 11 holidays. This is true, however the data presented by the parties show that the OCSEA bargaining unit has negotiated for other issues not included in the police contract. Therefore, the Fact Finder is not recommending the City's position on this issue.

The second part of the City's demand is that an employee must work the scheduled shift before and after the holiday to receive the holiday pay. During the last round of negotiations the City also made similar demands, but could not get the scheduling language included into the contract. The Union countered that the language in question has been contained in the contract since 2006.

In this instance the City is requesting changes that work to the detriment of the employees. The Fact Finder agrees that there is some economic impact of its demand. However, the same language (cost implication) has been in the contract for over ten years. Therefore, given the recommendation on wages and in light of the fact that the City's financial outlook is, at the very least no worse than it has been for the last ten years, the Fact Finder does not find that the City proved that there was a need for its suggested language.

Finding of Fact: The City did not prove that there was a need for its suggested changes to the language of Article 18.

Suggested Language: Current Contract Language.

Issue: Article 23.1 - Health Insurance

Union Position: The Union demands that the City pay 100% of the health insurance premium and increase the life insurance offered to each of its members to \$100,000.00 from the current \$50,000.00.

City Position: The City rejects the Union's demand and counters with current contract language.

Discussion: The Union's demand is based on the fact that the City changed its insurance to the Michigan Conference of Teamsters Health and Welfare Plan and the Union's argument that the City should save a significant amount on its insurance cost. The Union members believe that they should share in the savings. The City pointed out that there is only one insurance plan for the City and everyone on the City plan pays 10% of the premium and the City pays 90%. The City does not believe that there should be different plan designs for different groups of employees.

As an alternative, the Union also demanded at a minimum, that no union member pay more for insurance under the new contract than the employee paid under the old plan. While the new plan does save a significant amount, a few employees will pay more for insurance. The Union does not believe that this is reasonable. The City countered this argument by presenting evidence that the employees who are paying somewhat more for insurance are still paying less than they would have paid under the old plan.

The Fact Finder believes that the change of insurance plans was a good financial decision for the City. Any money that the City saves on any expenditure reduces the demands on the City's limited financial resources and puts the City in a better position to emerge from Fiscal Emergency. However, the Fact Finder is unaware of any

jurisdictions that do not charge all of their employees the same amount for insurance.²

Therefore, the Fact Finder does not believe that the Police Department personnel should be treated differently than all other Wellston employees with respect to medical insurance.

Finding of Fact: Even though the police union was instrumental in finding a cheaper insurance plan for the City, that fact does not necessitate the City paying 100% of the police personnel's insurance premiums.

Suggested Language: Current Contract Language.

Note: The language in Article 23 (1) simply lists how much of the insurance cost is paid by the City and the employees. Therefor the current language still reflects the Fact Finder's recommendation.

Issue: Article 23.2 – Life Insurance

Union Position: The Union demands that the amount of term life insurance purchased by the City will be increased to \$100,000.00 from \$50,000.00.

City Position: The City rejects the Union's demand and counters with current contract language.

Discussion: The Union believes that the City should increase the amount of insurance that it purchases for each officer. Currently, the City picks up the cost for \$50,000.00 of insurance and the Union demands that the amount be doubled. The City rejects the demand based on cost and parity considerations. The City asserts that the cost of the

² Certain jurisdictions have different plans, e.g. an 80/20 plan or a catastrophic plan. However, everyone that elects a certain plan is charged the same amount as every other plan participant. The Fact Finder is unaware of any group of employees who pay less than all other employees for exactly the same coverage.

demand, although not substantial, represented a new (enhanced) expenditure and the City stated that it did not have the money to fund the demand. The City also provided information on the contracts between the OCSEA and the Fire Department. Both of those contracts specified that the amount of insurance purchased by the City. The OCSEA unit has a \$35,000.00 limit with a double indemnity clause in case of accidental death, and the Fire Department contract specifies a \$50,000.00 limit with a double indemnity clause in case of accidental death. Therefore, the Police Department personnel are treated exactly the same as other City employees with respect to Life insurance.

Finding of Fact: The Union did not prove that there was a need for the City to double the amount of insurance purchased for its membership.

Suggested Language: Current Contract Language

Issue: Article 23.3 – Liability and False Arrest Insurance

Union Position: The Union demands that City provide up to \$7.24/mo. to pay for criminal defense insurance. This is an increase in the payment of \$3.24/mo.

City Position: The City has agreed to the Union demand.

Finding of Fact: The City shall provide an extra \$3.24/mo. to each employee for the purchase of criminal liability insurance.

Suggested Language: Article 23.3

... The Employer shall also provide criminal defense insurance at a cost up to \$7.24 per month for each employee by subscribing to a plan provided by the Union.

Issue: Article 24.2 (B) – Educational Incentives

Union Position: The Union demands that the City drop the language in the contract that states courses that are eligible for reimbursement must be taken in police science.

City Position: The City rejects the Union’s demand and counters with current contract language.

Discussion: The City’s position is based on two factors: 1) that the parties negotiated on this issue, but were unable to find an acceptable compromise position, and 2) that the Union’s demand would open the door to reimbursement for any courses taken by the employee if the Union’s position is recommended by the Fact Finder. The Fact Finder notes that most union contracts contain an Education article but almost 100% of these contracts specify that the courses eligible for reimbursement must be related to the employee’s job. In this case, that would mean criminal justice courses, etc. Therefore, the Union’s suggested language would not restrict reimbursement to job related education. Given the Employer’s position on the demand and the lack of specificity about which courses would be eligible for reimbursement, the Fact Finder cannot recommend the Union’s demand on this issue.

Finding of Fact: The Union did not prove that there was a need for its suggested language on Article 24.2 (B).

Suggested Language: Current Contract Language

Issue: Article 26 (F) – Mileage Reimbursement

Union Position: The Union demands that the mileage reimbursement for the use of a personal car on official business be raised from \$.25 cents per mile to the GSA standard mileage rate.

City Position: The City contends that the Union has failed to show why this change is necessary, and that this is just another economic demand that it cannot meet and rejects the Union’s demand and counters with current contract language.

Discussion: This is another clause where the Fact Finder is sympathetic to the Union’s demand, but recognizes that it has an impact on the City’s finances. Given the state of the City’s finances and recognizing that the City is in Fiscal Emergency, the Fact Finder cannot recommend the Union’s position on this issue.

Finding of Fact: The City is still in Fiscal Emergency and cannot meet the Union’s economic demands.

Suggested Language: Current Contract Language

Note: The Contract shall take effect when ratified by the parties and run until December 31, 2018. In addition, all tentative agreements reached by the parties are included in this recommendation by reference.

Signed this 12th day of August 2016, at Munroe Falls, Ohio

/Dennis Byrne/

Dennis M. Byrne, Fact Finder